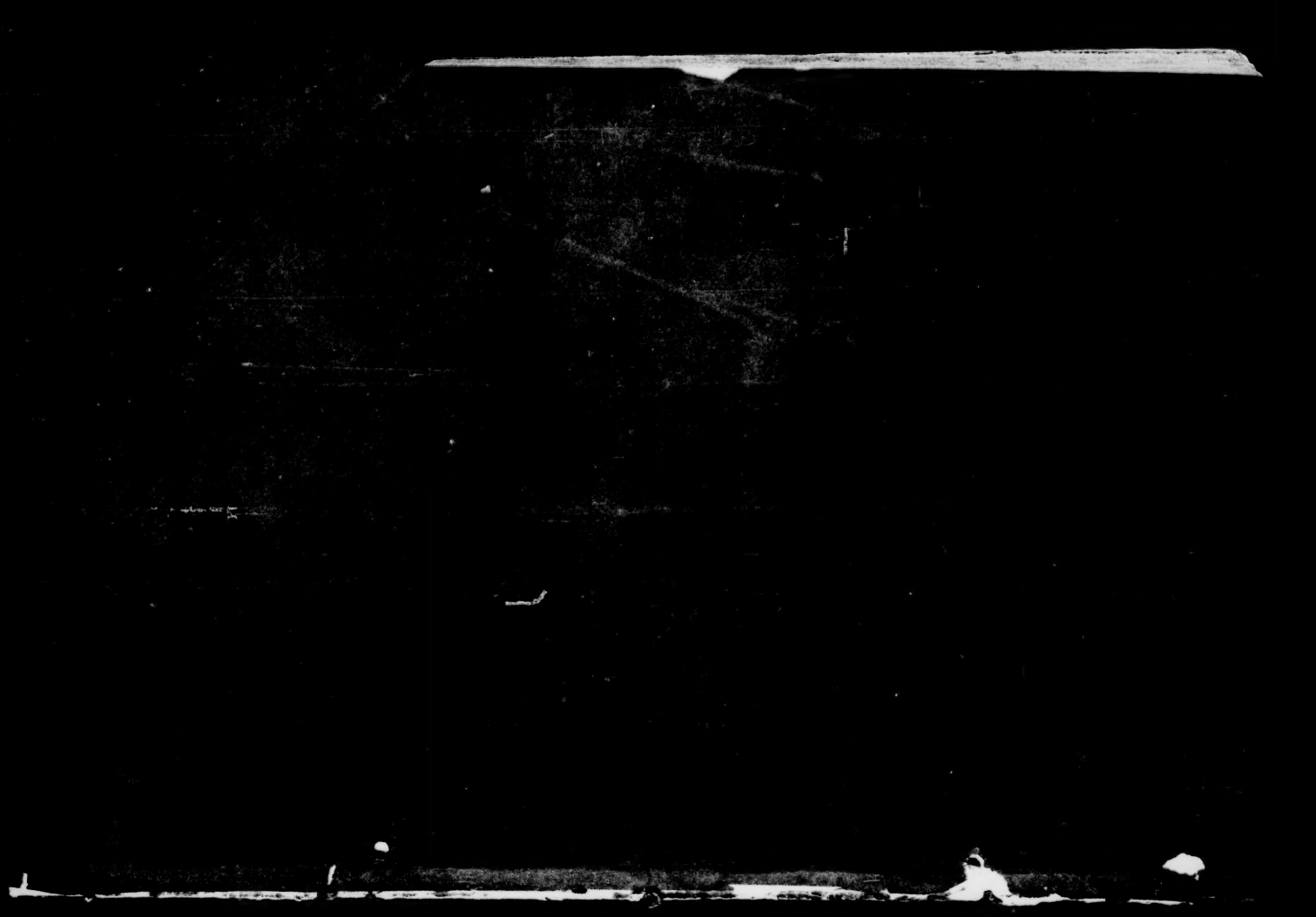

Bill

SUPREME COURT OF THE UNITED STATES.

No. 352.

JAMES MYERS ET AL., APPELLANTS.

vs.

WILLIAM FENN ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Bond for costs	2	2
Bill of complaint	3	2
Writ of subpœna	24	9
Answer of Fenn	26	10
Robbins	48	18
Thompson	101	44
Green	120	47
Replication to answer of Robbins	131	51
Thompson	133	51
Green	134	52
Petition of H. C. Bowen et al. to be made complainants	136	52
Notification to defendants	141	55
Replication to answer of Fenn	144	55
Record entry	145	56
Record entry, decree	146	56
Stipulation to dismiss as to Thompson and Green	151	58
Record entries	151	58
Petition of complainants to set aside order of dismissal	155	60
Second subpœna	161	62
Record entry	163	63
Examination of Robbins	165	63
Record entry, (cause set down for hearing)	204	76
Decree of dismissal	205	76
Record entry, (appeal granted)	206	77
in ppeal bond	207	77
foll ulation extending time to docket cause	208	78
's certificate	210	78
ment of errors	211	78

1 UNITED STATES OF AMERICA, *ss:*

To William Fenn, Enos V. Robbins, Samuel Thompson, and William B. Green, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holen at Washington, on the first Monday in December, 1864, pursuant to an appeal taken from the decree rendered by the circuit court of the United States for the eighth circuit and northern district of Illinois, in a cause wherein James Myers, William Kinsley, Charles Stout, Henry C. Bowen, Wellington Clapp, William M. Bickley, Thomas B. Reed, Absolem C. Jennings, Joel Read, William K. Hawley, and Richard C. Tabott are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the decree of the said circuit court should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness this 3d day of December, in the year of our Lord 1864.

THOMAS DRUMMOND.

I hereby accept service of the above citation, by copy, this 3d day of December, A. D. 1864.

HOYNE, MILLER & LEWIS.

1½ Pleas in the circuit court of the United States of America for the northern district of Illinois, in chancery, sitting at Chicago, in the district aforesaid, before the Hon. Thomas Drummond, district judge of said district, and in the absence pro tempore of the Hon. David Davis, one of the justices of the Supreme Court of the United States of America, sole judge of said circuit court, on Friday, the fifth day of August, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-ninth year.

WM. H. BRADLEY, *Clerk.*

JAMES MYERS, WILLIAM KINSLEY, CHARLES STOUT, HENRY C. BOWEN, WELLINGTON CLAPP, WILLIAM M. BECKLEY, THOMAS B. READ, ABSOLEM C. JENNINGS, JOEL READ, WILLIAM K. HAWLEY, and RICHARD C. TALBOTT,
vs.
WILLIAM FENN, ENOS V. ROBBINS, impleaded with SAMUEL THOMPSON and WILLIAM B. GREEN. } Chancery.

2 NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered, that on the thirty-first day of July, in the year of our Lord one thousand eight hundred and fifty-eight, William Kinsley and Charles Stout, complainants, by Messrs. Smith & Dewey, their solicitors, filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, their bill of complaint against William Fenn, Enos V. Robbins, Samuel Thompson, and William B. Green, defendants. Also, at the same time, filed their bond for costs in said entitled cause which said bond and bill are in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Circuit court, July term, A. D. 1858.

JAMES MYERS, WILLIAM KINSLEY, CHARLES STOUT,
vs.
WILLIAM FENN, ENOS V. ROBBINS, SAMUEL THOMPSON, William B. Green. } In chancery.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court in default of payment by the plaintiffs of any costs
3 ordered or adjudged to be paid by them, hereby agree and stipulate that execution may issue against our property for any costs taxed against them.

Dated this thirtieth day of July, A. D. 1858.

SMITH & DEWEY.

Endorsed: Filed July 31st, A. D. 1858.

WM. H. BRADLEY, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

Circuit court of the United States for the seventh circuit and northern district of Illinois, sitting in chancery.

To the judges of the circuit court of the United States for the seventh circuit and northern district of Illinois:

James Myers, William Kinsley, and Charles Stout, of the city of New York, who are citizens of the State of New York, bring this their bill against William Fenn, Enos V. Robbins, Samuel Thompson, and William B. Green, of the city of Lacon, in the county of Marshal, who are citizens of the State of Illinois and residing in said district aforesaid. And therefore your orators complain and say that heretofore, to wit, in the term of May, in the year of our Lord one thousand eight hundred and fifty-eight, in the circuit court of the United States for the seventh circuit and northern district of Illinois, by the consideration and judgment of said court, your
4 orators recovered against William Fenn, one of the defendants in this suit, the sum of eleven hundred and fifty-two dollars and thirty-nine cents, for the damage which they had sustained as well by the occasion of the non-performance of certain promises and undertakings as for the costs and charges of your orators by their about their suit in that behalf expended, which were adjudged to your orators in and by the said court, whereof the said defendant William Fenn was convicted, as by the record of the said judgment in the office of the clerk of said court, reference being thereto had, and to which, for greater certainty, your orators pray leave to refer, will more fully and at large appear.

And your orators further show unto your honor that the said judgment so recovered in manner aforesaid, remaining in full force and effect, and the costs and damages aforesaid unpaid and unsatisfied, your orators on or about the third day of June, in the year of our Lord one thousand eight hundred and fifty-eight, for the purpose of obtaining satisfaction of the said judgment, sued and prosecuted out of the said court a writ of the people, called a fiera facias, directed to the United States marshal for the northern district of Illinois, that being the district in which said defendant resided at the time of the issuing of said writ, by which said writ the said mar-
5 shal was commanded that of the goods, chattels, lands, and tenements of said William Fenn, one of the defendants, in your district, you cause to be made the sum of eleven hundred and fifty-two dollars and thirty-nine

cents, which your orators in the said circuit court recovered against the said defendant William Fenn, and that he should have the money at the clerk's office of said court at Chicago, in said district, in ninety days from the date thereof, to satisfy the judgment so recovered by your orator as aforesaid, and that he should have then and there that writ.

And your orator further shows unto your honor that the said writ of fieri facias, before the delivery thereof to the said marshal of the said district aforesaid, was duly endorsed, and was afterwards and on or about the third day of June, in the year of our Lord one thousand eight hundred and fifty-eight, delivered to the said marshal to be executed in due form of law.

And your orators further show unto your honor that the said marshal of said district aforesaid, on the thirtieth day of May, in the year of our Lord one thousand eight hundred and fifty-eight, returned on the said writ, to him in that behalf directed and delivered as aforesaid, that he had tried to find the within-named William Fenn to make a demand for money or property to satisfy the execution, but had been unable to do so, and had made inquiry of persons who were acquainted with said William Fenn whether he had any property, and had been informed that he had made an assignment and that he had no property whatever, nor had the said marshal found any property upon which to levy, and that the said execution was therefore returned wholly unsatisfied, as by the said writ of fieri facias and the directions and the return of the said marshal endorsed thereon as aforesaid, filed in the office of the clerk of the said circuit court on the day and year last-mentioned, will more fully appear, and to which or to a copy thereof your orators pray leave to refer.

6

And your orators further show unto your honor that the said judgment still remains in full force and effect, not reversed or satisfied, or otherwise vacated, and that the said William Fenn or any other person has not paid the same to your orators, but has hitherto wholly neglected, and refused so to do.

And your orators further show unto your honor that there is now actually and equitably due to your orators upon the aforesaid judgment the sum of eleven hundred and fifty-two dollars and thirty-nine cents, together with the interest thereon from the twenty-fourth day of May, one thousand eight hundred and fifty-eight, over and above all claims of said defendant by the way of set off or otherwise.

7

And your orators further show unto your honor that on or about the tenth day of December, and before that time, in the year of our Lord one thousand eight hundred and fifty-seven, the said defendant William Fenn was engaged in the mercantile business at the city of Lacon, in the county of Marshall, in Illinois, in the district aforesaid, and that your orators are informed and believe that in the course of the said merchantile business of the said defendant William Fenn divers persons became indebted to him to a large amount, and that the said defendant last named, at the time of filing this your orators' bill of complaint, has debts to him and for which he holds divers securities and evidences to a large amount, and has divers goods, wares, and merchandise, and other articles of personal property which belong to him, or in which he is in some way or manner beneficially interested, and that he has equitable interests and things in action of some nature or kind which might and ought to be applied to the payment of your orators' said judgment against him, the said defendant William Fenn.

And your orators also charge that the said defendant William Fenn is the owner of or in some way or manner beneficially interested in some real estate in this or some other State, or some chattels real of some name or kind, or some contract or agreement relating to real estate, or the rents, issues, and profits of some real estate, and also that the said

8

defendant William Fenn is the owner of, or in some way beneficially interested in, the stock of some company incorporated or unincorporated, or in the profits of some company or copartnership, and also that he has in his possession at the time of the filing of this your orators' bill of complaint some money in coin or bank-bills, or that he has money deposited in some bank or elsewhere to his credit or that he has money or securities for the payment of money held by some other person in trust or otherwise for his benefit.

And if the said defendant, William Fenn, has made any sale, assignment, or transfer of his property or effects or any part thereof, your orators expressly charge that they believe such sale, assignment, or transfer is merely colorable and made with a view of protecting the property or effects of said defendant William Fenn so assigned, and placing the same beyond the reach of your orator's said judgment, and enabling the said defendant William Fenn to control and enjoy the same and the avails thereof, or to hinder and delay your orators in the collection of their debt, now in judgment
9 as aforesaid, and that so it would appear if the said defendants would state and set forth when and to whom such sale, transfer, or assignment was made and what was the amount in value of the property or effects so sold, assigned, or transferred, and what were the terms upon which such sale, transfer, or assignment was made, and what disposition has been made of the property or effects so sold, assigned, or transferred, and in whose possession the same now is, or what has been done with the avails thereof. And your orator claims a full and complete discovery of all such property, effects, and things in action belonging to the said defendant, William Fenn, and of all trusts whereby any property, debts, or effects are held for the use or benefit of the said defendant last named, and of every sale, assignment, or transfer which the said defendant last named has made of his property, debts, or other effects, and of the person or persons to whom such sale, assignment, or transfer has been made, the amount and value of the property, debts, or other effects so sold, assigned, or transferred, and the trusts and other conditions upon which such sale, assignment, or transfer was made and all the facts and circumstances relating thereto, and particularly
10 what is the situation of the property, debts, or other effects sold, assigned, or transferred at the time of filing this your orators' bill of complaint.

And your orators further show unto your honor that they have reason to believe and do believe that the said defendant last named has property and other equitable interest, things in action, or effects of the value of more than five hundred dollars, exclusive of all prior first claims thereon, and which your orators have been unable to reach by execution on said judgment against the said defendant last named, and that this your orators' bill of complaint is not exhibited by collusion with the said defendants or with any other person, or for the purpose of protecting the property or effects of said defendant William Fenn against the claims of other creditors, but for the sole purpose of compelling payment and satisfaction of the judgment so as aforesaid recovered by your orators against the said defendant William Fenn.

And your orators further shows unto your honor, upon information and belief, and so charge the fact to be, that having been for a long time theretofore in the mercantile business in the city of Lacon, county of Marshal, State of Illinois, and being then the owner of a large stock of merchandize of the value of eighteen thousand dollars or thereabouts, on or about
11 the tenth of day of December, in the year one thousand eight hundred and fifty-seven, or very soon thereafter, said defendant William Fenn made or pretended to make a sale and transfer of his whole stock of merchandize to said defendant Samuel Thompson, for the sum of eighteen thou-

sand dollars, and took his pay in Lacon City and Marshall County bonds, as is pretended; that at the time of said pretended sale said defendant William Fenn was greatly in debt, embarrassed, and in failing circumstances; that said defendant Samuel Thompson knew of or suspected, or had good cause to suspect, the indebtedness, embarrassment, and failing circumstances of said William Fenn; that said sale was made, said bonds paid, and the possession of the property so pretended to have been sold changed by collusion between said defendants William Fenn and Samuel Thompson, for the purpose of placing the property and effects of said William Fenn beyond the reach of any execution which might issue upon any judgments which might thereafter be obtained against said defendant William Fenn, and for the purpose of giving the control of said property and effects to said Fenn, and is fraudulent and void as to your orators.

12 And your orators further show unto your honor, upon information and belief, and charge the fact so to be, that on or about the 30th day of December, A. D. 1857, and but a very short time after said sale from said Fenn to said Thompson, said Fenn being then greatly in debt, embarrassed, and in failing circumstances, made a pretended assignment of all his ostensible property and effects, both real and personal, to said defendant Enos V. Robbins, for the benefit of the creditors of said Fenn, as is pretended.

And your orators further show unto your honor, upon information and belief, and so charge the fact to be that said assignment did not convey and include all the property and effects of said Fenn, but that said Fenn reserved and kept back for his own use and benefit a large amount of money, personal property of some nature or kind, notes, evidences of debt, bonds, drafts, checks, bills of exchange, or accounts; that said assignment was not made in good faith, but by collusion between said defendant Fenn and said defendant Robbins, for the purpose of placing the property and effects of said Fenn out of and beyond the reach of any executions which might be issued or any judgments which might be obtained against said Fenn, and giving the control of the property so pretended to have been assigned to, and with

13 intent to delay and hinder the creditors of, said Fenn, and is fraudulent and void as to your orators.

And your orators further show unto your honors, upon information and belief, and charge the fact so to be, that at or about the time or times of the said sale and assignment aforesaid, but at what exact time your orators are not informed and therefore cannot state, said defendant Fenn having been before that time and being then owner of a large quantity of land, being about five thousand acres, in the State of Illinois, of about the value of forty-five thousand dollars, upon which there was an incumbrance of about thirty thousand dollars, and that being so the owner of said land, said defendant Fenn, being then greatly in debt, in embarrassed and failing circumstances, sold and conveyed the said land to the said defendant William B. Green, for the sum of forty-five thousand dollars, said Green assuming the said incumbrance of thirty thousand dollars, and giving his note or obligation for the balance of fifteen thousand dollars, payable in the notes or obligations of said Fenn, then outstanding, at par; that said defendant Green well knew or suspected, or had good cause or reason to suspect that said defendant Fenn was then in embarrassed and failing circumstances,

14 that his debtors were pressing him for payment, and that was then on the eve of making an assignment, that the said sale and conveyance was not made in good faith, but by collusion between said Fenn and said Green, for the purpose of placing Fenn's interest in said land out and beyond the reach of any executions which might be issued upon any judgments which might be obtained against said defendant Fenn, with intent to hinder and delay the creditors of said Fenn, and with the intent and for

the purpose of enabling said Green to buy up the outstanding obligations or notes of said Fenn at a great discount, for the benefit of said Fenn and Green, or one or both of them, and that said sale and conveyance of said land is fraudulent and void as to your orators.

And you orators further show unto your honor, upon information and belief, and charge the fact so to be, that said defendants, William Fenn, Enos V. Robbins, Samuel Thompson, and William B. Green, or some or one of them, have money, notes, accounts, lands, property, and effects of some name or kind, either real, personal, or chattels real, in their possession or under their control, which belong to said defendant Willian Fenn, or in which he is in some way or manner beneficially interested, and which your orators have been unable to reach on their said execution upon their said judg-
15 ment against said defendant Fenn, and which ought to be applied in satisfaction and discharge of the same.

And your orator well hoped that the said defendant William Fenn would have paid to your orators the amount due them on said judgment or would have applied for that purpose any property, money, debts, or other equitable interests or things in action belonging to him or in which he is in any way interested, as in equity and good conscience he ought to have done. But now, so it is, may it please your honor, that the said defendants, combining and confederating together and with divers other persons to your orators unknown, but whose names, when discovered, they pray may he inserted herein with proper and apt words to charge them, and contriving how to injure and defraud your orators in the premises, neglect or refuse to pay the amount so due on their said judgment or to apply for that purpose any property, money, debts, or other equitable interests or things in action belonging to the said defendant William Fenn, and for reason whereof the said defendants set up a variety of unfounded pretences. All which actings, doings, neglects, and pretences are contrary to equity and good conscience and tend to the manifest wrong and injury of your orators in the premises.

16 In tender consideration whereof, and forasmuch as your orators are remediless in the premises at and by the direct and strict rules of the common law, and cannot have adequate relief save in a court of equity, where matters of this and a similar nature are properly cognizable and relievable, to the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their several and respective corporal oaths and according to the best and utmost of their several and respective knowledge, remembrance, and belief, full, true, direct, and perfect answer make to all and singular the matters and things hereinbefore stated and charged, and particularly to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written, they are required to answer; that is to say, the said defendants may fully set forth and discover, according to the best of their knowledge, remembrance, information, and belief, the nature and situation, amount, and value of all the property, interest, and effects of the said defendant, William Fenn, including all things in action of whatever nature or kind, with all the particulars relating thereto, and that they may answer and state whether at the time of filing this your orators' bill of complaint he,
17 the said defendant William Fenn, has not debts due to him to a considerable amount; and if so, that they may state particularly the amount of such debts respectively, and from whom the same are due, and what security is held therefor; and also that they may state which and what amount of said debts are good and collectable and what amount bad or doubtful, and whether at the time of filing this your orators' bill of complaint he has not some property, real or personal, in law or equity, belonging to him or held in trust for him or in which he has some beneficial interest of some

kind or description; and if so, that they may state and set forth a full, true, and particular account thereof, and the nature and value of his interest therein, and that they may also state whether he has not money of some kind in his possession or under his control, or deposited to his credit or for his use, or in some way or manner held for his use and benefit, and if so, they may state and set forth particularly the amount thereof, and how and by whom the same is held, and they may also state whether he has any other equitable interest or thing in action or other means belonging to him or in which he is in any interested whereby he could pay any part of the amount so as aforesaid due to your orators upon
18 their said judgment against him, the said defendant William Fenn.

And if the said defendant last named has made any sale, assignment, or transfer of his property and effects or any part thereof, that then the said defendants may state and set forth, each for himself, jointly or separately, generally, but not in items, what property or effects have been so sold, assigned, or transferred, and the value thereof, and particularly when and to whom and for what purpose and upon what terms and conditions such sale, assignment, or transfer was made and what has been done under such sale, assignment, or transfer, and what has been done with the property or effects so sold, assigned, or transferred and the avails thereof; and that the said defendant, may specially state or set forth, each for himself, jointly or separately, in addition—

1st. What was the amount, kind, value, quantity, and description of the stock of goods sold by said defendant Fenn to said defendant Thompson, as aforesaid; when was the said sale made; what were the terms and conditions thereof; what were the avails thereof; what has been done with them; and if paid out and disposed of, to whom were the same paid out or disposed of and for what purpose.

2. What was the nature, kind, value, quantity, and discription of the property and effects included in said pretended assignment from de-
19 fendant Fenn to defendant Robbins; what were the terms and the conditions of said the assignment; what has been done under the same; what has been done with the property and effects included therein or the avails thereof.

3rd. What was the number of acres, value, and full description of the land sold and conveyed or pretended to be sold and conveyed from said Fenn to said Green; what were the terms of said sale; when was Fenn to be paid, and how, or in what manner.

And also that the defendants may state and set forth in manner aforesaid all and singular the premises and all the facts and circumstances touching the matters hereinbefore charged and stated as fully and particularly as though they and each of them were specially interrogated thereto.

Any your orators pray this honorable court that the said sale of goods and merchandize from said defendant Fenn to defendant Thompson may be decreed and adjudged to be fraudulent and void; that the said pretended assignment from defendant Fenn to defendant Robbins may be decreed and adjudged to be fraudulent and void; that the said pretended sale of lands may be decreed and adjudged to be fraudulent and void, and that the said defendants Fenn, Thompson, Robbins, and Green be compelled to
20 render a full, true, and just account of all the matters and affairs, property and effects, either real, personal, or chattels real, either legal or equitable, of the said Fenn, whether in possession or under the control of them or some or one of them, and that the same may be applied in *in* satisfaction and discharge of your orators' said judgment against the said defendant William Fenn, and for such other and further relief as shall seem agreeable to equity and good conscience.

And that the said defendants, or some of them, may be decreed to pay

your orators the amount so as aforesaid due to them for principal and interest on their said judgment, together with your orators' costs and charges in this behalf sustained, and may be decreed to apply for that purpose any money or property, real or personal, in law or equity, debts, choses in action, or equitable interests belonging to said defendant William Fenn, or held in trust for him, or in which he is in any way or manner beneficially interested; and that the said defendants may be enjoined and restrained from selling, assigning, transferring, delivering, negotiating, discharging, receiving, collecting, incumbering, or in any way or manner disposing of or intermeddling with any debts or demands due to said defendant William Fenn, or any bills, bonds, notes, drafts, checks, book accounts, mortgages,
21 judgments, or other debts due to him, whether in his possession or held by some other person in trust for him or to his use or benefit; and also from selling, assigning, transferring, or in any manner incumbering or disposing of or intermedling with any money in coin, bank-bills, drafts, or checks belonging to him, whether in his possession or held by any person in trust for his use or benefit, or any stock or interest in any private or incorporated company, or any property, real or personal, things in action, or chattels real held by him or by any other person for him, or in which he has any interest whatever, except when such trust has been created by, or the fund so held in trust has proceeded from, some person other than the said defendant William Fenn.

And that the said defendant last named may also be in like manner prohibited from making any assignment of his property and from confessing any judgment for the purpose of giving preference to any other creditors over your orators, and from doing any other act to enable any other creditors to obtain his property; and that a receiver may be appointed according to the course of practice in this court, and with the usual powers of receivers in like cases, of all the property, equitable interests, things in action, and effects of the said defendant William Fenn; and that your ora-
22 tors may have such further and other relief in the premises as the nature of their case shall require and as shall be agreeable to equity and good conscience.

May it please your honor to grant unto your orators the people's writ of injunction issuing out of and under the seal of this honorable court, to be directed to the said defendants Fenn, Robbins, Thompson, and Green, and to their counsellors, attorneys, solicitors, trustees, and agents, therein and thereby commanding and strictly enjoining the said defendants and the persons before mentioned in manner aforesaid. And may it please your honor to grant unto your orators the people's writ of subpœna issuing out of and under the seal of this honorable court, to be directed to the said defendants William Fenn, Enos V. Robbins, Samuel Thompson, and William B. Green, therein and thereby commanding them and each of them, on a certain day and under a certain penalty to be therein inserted, that they personally be and appear before the judges of the circuit court of the United States for the seventh circuit and northern district of Illinois, at the court-room, in the city of Chicago, then and there to answer all and singular the premises, and to stand to and abide by and perform such order and decree therein as to your honor shall seem agreeable to equity and good conscience.

23 And your orators will ever pray, &c.

JAMES MYERS,
WILLIAM KINSLEY,
CHARLES STOUT,
By E. S. SMITH,
Their Agent and Attorney.

SMITH & DEWEY, *Solicitors for Complainants.*
E. M. DEWEY, *of Counsel.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

On this thirty-first day of July, one thousand eight hundred and fifty-eight, personally came before me Benjamin J. Sweet, who, being duly sworn, saith that he is the agent of the above-named complainants, none of whom are residents of, and all of whom are absent from, the State of Illinois, has heard the foregoing bill of complaint read, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things therein stated on information and belief, and as to these matters he believes it to be true.

BENJAMIN J. SWEET.
WM. H. BRADLEY, *Clk.*

Endorsed: Filed July 31st, 1858.

WM. H. BRADLEY, *Clk.*

24 On the same day, to wit, on the thirty-first day of July, A. D. 1858, a writ of subpœna issued out of said clerk's office against said defendants in said entitled cause; which said subpœna, together with the memorandum and notice for writ of injunction thereto attached, and the return of the marshal endorsed thereon, is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

The United States of America to William Fenn, Enos V. Robbins, Samuel Thompson, and William B. Green, greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of September next, to answer the bill of complaint of James Myers, William Kinsley, and Charles Stout, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Roger B. Taney, chief justice of the Supreme
25 Court of the United States of America, at Chicago aforesaid, this thirty-first day of July, in the year of our Lord one thousand eight hundred and fifty-eight, and of our independence the 83 year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Memorandum.—The within-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the within writ is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

Circuit court for the northern district of Illinois, of the July term, A. D. 1858, in chancery.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

JAMES MYERS *et al.*
vs.
WILLIAM FENN *et al.*

Take notice that we shall move this honorable court, on the 13th day of

September, at the going in of the court on that day, or as soon thereafter as counsel can be heard, that a writ of injunction issue against the defendants, in accordance with the prayer of the bill herein. Yours, &c.,

SMITH & DEWEY, *Compl'ts' Sol.*

Dated 31st of July, A. D. 1858.

To the defendants, esq.

26 The marshal will serve this subpœna and notice for a writ of injunction personally upon each of the defendants, or in case any of them cannot be found, then serve on such by leaving a copy thereof at the dwelling-house or usual place of abode of such defendant, with some free white person who is a member or resident of the family, of suitable age and discretion.

SMITH & DEWEY, *Compl'ts' Sol.*

I executed this chancery subpœna on the within-named Enos V. Robins, Samuel Thompson, and William B. Green, by delivering a copy of the same to each of them personally, this 4th day of August, 1858, and on William Fenn Aug. 4, 1858, by leaving a copy of the same at his residence, with Mary Bevington, a free white person, over the age of ten years, and a member of the family of said Fenn.

JAMES W. DAVIDSON, *U. S. Marshal,*
By E. M. FRY, *Dept.*

Endorsed: Filed August 5th, 1858.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the twentieth day of December, A. D. 1858, came said defendant William Fenn, by his solicitors, Messrs. Hoyne, Miller & Lewis, and filed in said clerk's office his answer in said entitled cause, which said answer is in the words and figures following, to wit:

Answer.

27 UNITED STATES OF AMERICA, ss:

Circuit court of the United States for the seventh circuit and northern district of Illinois, in chancery sitting.

JAMES MYERS, WILLIAM KINSLEY, AND CHARLES STOUT
vs.
WILLIAM FENN, ENOS V. ROBBINS, SAMUEL THOMPSON, and William B. Green. } Creditors' bill.

The several answer of William Fenn, one of the said defendants, to said complainants' bill of complaint.

The said defendant Fenn, now and at all time saving and reserving to himself all and all manner of benefit of exception to the many errors, inaccuracies, and insufficiencies in complainants' bill of complaint contained, for answer to the same, or to so much thereof as he is advised it is material for him to make answer unto, he, answering, admits that, as he is informed and believes to be true, in the term of May, in the year of our Lord one thousand eight hundred and fifty-eight, in the circuit court of the United States for the seventh circuit and northern district of Illinois, by the consideration and judgment of said court, said complainants recovered against the said defendants William Fenn, this respondent, the sum of eleven hun-
28 dred and fifty-two dollars and thirty-nine cents, for the damage which they had sustained, as well by the occasion of the non-performance of certain promises and undertakings as for the costs and charges of said

complainants by them about their suit in that behalf expended, which were adjudged to said complainants in and by the said court, whereof the said defendant William Fenn was convicted, as by the record of said judgment in the office of the clerk of said court will appear. That said judgment so recovered in manner aforesaid, remaining in full force and effect, and the costs and damages aforesaid unpaid and unsatisfied, said complainants, on or about the third day of June, in the year of our Lord one thousand eight hundred and fifty-eight, for the purpose of obtaining satisfaction of the said judgment, sued and prosecuted out of the said court a writ of the people, called a fieri facias, directed to the United States marshal for the northern district of Illinois, that being the district in which said defendant Fenn resided at the time of the issuing of said writ, by which said writ said marshal was commanded that of the goods, chattels, lands, and tenements of said William Fenn, one of the defendants, in your district you cause to be made the sum of eleven hundred and fifty-two dollars and thirty-nine cents, which said complain-
29 ants in the said circuit court recovered against the said defendant William Fenn, and that he should have the money at the clerk's office of said court, at Chicago, in said district, in ninety days from the date thereof, to satisfy the judgment so recovered by said complainants as aforesaid, and that he should have then and there that writ. That said writ of fieri facias, before the delivery thereof to the said marshal of the said district aforesaid, was duly indorsed, and was afterwards, and on or about the third day of June, in the year of our Lord one thousand eight hundred and fifty-eight, delivered to said marshal to be executed in due form of law. That said marshal of the said district aforesaid, on the thirtieth day of May, in the year of our Lord one thousand eight hundred and fifty-eight, (or within a few days of that time,) returned on the said writ, to him in that behalf directed as aforesaid, that he had tried to find the within William Fenn to make a demand for money or property to satisfy that execution, but had been unable to do so, and had made enquiry of persons who were acquainted with said William Fenn, whether he had any property, and had been informed that he had made an assignment, and that he had no property whatever, nor had the said marshal found any property upon which to levy, and that the said execution was therefore returned wholly unsatisfied, as by the said
30 writ of fieri facias and the directions and the return of the said marshal endorsed thereon as aforesaid, filed in the office of the clerk of the said circuit court, will probably appear. That the said judgment still remains in full force and effect, not reversed or satisfied or otherwise vacated, and that the said William Fenn, or any other person, has not paid the same to said complainants. That there is now actually and equitably due to said complainants, upon the aforesaid judgment, the sum of eleven hundred and fifty-two dollars and thirty-nine cents, together with the interest thereon from the twenty-fourth day of May, one thousand eight hundred and fifty-eight, over and above all claims of said defendant, Fenn, by way of set-off or otherwise.

Your respondent, William Fenn, one of said defendants, further answering, admits that on or about the tenth day of December, and before that time, in the year of our Lord one thousand eight hundred and fifty-seven, he, the said William Fenn, was engaged in the mercantile business, at the city of Lacon, in the county of Marshall, in Illinois, in the district aforesaid; that in the course of the said mercantile business of him, the said Fenn, divers persons became indebted to him to a large amount. But your respondent, the
31 said William Fenn, denies that at the time of filing the said complainants' bill of complaint he had debts due to him, and for which he held divers securities and evidences to a large amount, or that he had at said time of filing of said bill divers goods, wares, and merchandise, and

other articles of personal property which belonged to him, or in which he was in some way or manner beneficially interested, or that he had at said time of filing said bill equitable interests and things in action of some nature or kind which might and ought to be applied to the payment of complainants' said judgment against him, the said William Fenn, except as hereinafter specially and particularly stated and set forth.

Respondent, further answering, denies that he is the owner of or in some way or manner beneficially interested in some real estate or in any real estate whatever in this or some or any other State, or some or any contract or agreement relating to real estate, or the rents, issues, and profits of some or any real estate, or that he, said Wm. Fenn, is the owner of or in some way beneficially interested in the stock of some company, incorporated or unincorporated, or in the profits of some or any company or copartnership,
32 or that he, said Fenn, has, or had at the time of filing of said complainants' bill of complaint, some or any money in coin or in bank-bills, or that he has money deposited in some bank or elsewhere to his credit, or that he has, or had at the filing of said bill of complaint, money, or securities for the payment of money, held by some or any other person or persons, in trust or otherwise, for his benefit, except as hereinafter particularly set forth and described.

Said respondent, further answering, positively and absolutely denies that if said defendant Fenn has made any sale, assignment, or transfer of his property or effects, or any part thereof, such sale, assignment, or transfer is or was merely colorable and made with a view of protecting the property or effects of him, the said defendant Fenn, so assigned, and placing the same beyond the reach of said complainants' said judgment, and enabling the defendant Fenn to control and enjoy the same and the avails thereof, or to hinder and delay said complainants in the collection of their debts, now in judgment as aforesaid, or that so it would appear if said defendants would state and set forth when and to whom such sale, transfer, or assignment was made and what was the amount in value of the property or effects so sold, assigned, or transferred, and what were the terms upon which such
33 sale, transfer, or assignment was made, and what disposition has been made of the property or effects so sold or assigned or transferred, and in whose possession the same now is, or what has been done with the avails thereof.

Respondent, further answering, admits that having been for a long time theretofore in the mercantile business in the city of Lacon, county of Marshal and State of Illinois, and being then the owner of a large stock of merchandize, of the value of eighteen thousand dollars or thereabouts, on or before the tenth day of December, in the year of our Lord one thousand eight hundred and fifty-seven, or very soon thereafter, said defendant William Fenn made a sale and transfer of his whole stock of merchandise to said defendant Samuel Thompson, for the sum of eighteen thousand dollars or thereabouts, and took his pay in Lacon City and Marshall County bonds; that at the time of said sale said defendant William Fenn was greatly in debt and embarrassed and in failing circumstances; that said defendant Samuel Thompson may have known or suspected, and probably had reason to suspect, the indebtedness, embarrassment, and failing circumstances of the said William Fenn; that said sale was not made, said bonds paid, and the possession of the property so sold changed by collusion between
34 said Wm. Fenn and Samuel Thompson for the purpose of placing the property and effects of said William Fenn beyond the reach of any execution which might issue upon any judgment which he thereafter obtained against said defendant William Fenn, and for the purpose of giving the control of said property and effects to said Fenn; but, on the contrary,

said respondent states most positively that said sale and transfer of said merchandise to said Thomson was made in good faith and upon a good and valuable consideration, without any collusion or fraudulent intent whatsoever.

Said William Fenn, further answering, saith that on or about the thirtieth day of December, in the year of our Lord one thousand eight hundred and fifty-seven, and but a very short time after said sale from said Fenn to said Thompson, said Fenn, being greatly in debt, embarrassed, and in failing circumstances, made an assignment of all his property and effects, both real and personal, to said defendant Enos V. Robbins, except as hereinafter specially described and set forth, for the benefit of all his creditors, viz: the creditors of said Fenn.

Said respondent further says that said assignment, with the exceptions hereinafter particularly set forth, did contain, convey, and include all the property and effects of said Fenn; that said Fenn did not reserve
35 and keep back for his own use and benefit a large amount of money, personal property of every kind or nature, notes, evidences of debt, bonds, drafts, checks, bills of exchange, or accounts; that said assignment was made in good faith, and not by collusion between said defendant Fenn and said defendant Robbins for the purpose of placing the property and effects of said Fenn out of and beyond the reach of any execution that might be issued on any judgment which might be obtained against said Fenn, and giving the control of the property so assigned or with intent to hinder the creditors of said Fenn, or for any fraudulent purpose in anywise whatever.

Respondent William Fenn, further answering, admits that on or about the fifteenth day of December, A. D. 1857, which was between the time of said sale to said Samuel Thompson and the time of said assignment to said E. V. Robbins, he made a contract of sale of lands to the said defendant Wm. B. Green, and received from said Wm. B. Green a contract about same in the words and figures following, to wit:

"I, William B. Green, of the county of Marshal and State of Illinois, have this fifteenth day of December, A. D. 1857, purchased of William Fenn, of said county and State, the following land, to wit: all of sections (21)
36 twenty-one, (23) twenty-three, (27) twenty-seven, and (35) thirty-five, in township (26) twenty-six north, of R. (9) nine east; also sections (3) three, (17) seventeen, and the south half of sect. eight, (8,) in township (25) twenty-five north, of range (9) nine east of the third principal meridian; all of the aforesaid lands being in the county of Vermillion and State of Ill.

"As a consideration for said lands, I have this day given to said William Fenn my written obligation or note of fifteen thousand dollars, payable within nine months from date, in said William Fenn's paper, which may consist in notes, acceptances, drafts, or any written evidence of indebtedness which have no offset against them.

"Further, said Fenn has this day given me for said lands a warranty deed, but it is expressly understood and agreed to by and between said Fenn and said Green that notwithstanding said Fenn has given the warranty deed above mentioned, there are incumbrances upon said lands and that it is expressly hereby agreed that said Fenn does sell said lands to me the said Green, subject to any and all incumbrances that existed upon said lands at the date of said warranty deed, any covenants in said deed to the contrary notwithstanding.

"It is further understood and hereby agreed that I, the said Green,
37 am to pay off said incumbrances, and I do hereby obligate myself, my heirs, executors, administrators, and assigns to settle, take up, and pay off all of said incumbrances so as fully to release said Fenn within

two years from this date from the same in any and every respect, now and forever, together with all notes and papers which may have been given by said Fenn prior to this date for the renewal of said incumbrances, or for interest on the same. Said incumbrances on the lands aforesaid consist mainly, if not wholly, of the following nature and description, to wit: a trust deed given by said Fenn to James Haines, of Tazewell Co., Ill., as trustee, to secure the payment of fifteen thousand dollars and interest due to the Bank of Newcastle, in Penn., and payable at G. H. Rupert & Co. banking office in Pekin, Tazewell Co., Ill., dated Sept. 22d, 1856, and payable in eighteen months from date, with int., and covering sections (23) twenty-three, (27) twenty-seven, (35) thirty-five, in township (26) twenty-six; also section (17) seventeen, in town. (25) twenty-five of the above-mentioned lands.

"The balance of said lands, it is expressly understood by said Fenn and said Green, have been previously conveyed by warranty deed by Wm.
38 Fenn and wife to Thomas Keatoe, of Cortland Co., State of New York, and that said Keatoe executed a bond for a deed to said Fenn on the payment of eleven thousand and two hundred dollars.

"Said bond is dated March 19th, 1856, and said eleven thousand and two hundred dollars is payable in three years after the date of said bond. It is also understood that said bond has been assigned to Chappelle & Valle, of St. Louis, for the better security of about seven thousand and five hundred dollars due them from said Fenn, and for which said Chappelle & Valle hold a trust deed of four thousand and five hundred dollars on said Fenn's residence, in the city of Lacon; and it is understood and agreed by said Fenn and said Green that said Green shall pay or cause to be paid at least three thousand dollars and *and* the interest on the same of the seven thousand and five hundred dollars due said Chappelle & Valle, and release said Fenn from the same.

"In witness whereof, I, the said Green, have hereunto set my hand and seal on the day and year first above written.

[SEAL.] "WILLIAM GREEN."

Said William Fenn, this respondent, answering, further says that the lands set forth in the aforesaid agreement of said William B. Green are all
39 of the lands he sold to said Green at any time at or about the time of the said sale to said Thompson and of the assignment to said Robbins as aforesaid; that he never sold any real estate since to said Green; that said contract of said Green's sets forth correctly the description of the lands sold to said Green, as well as the conditions of said sale, the consideration for the same from said Green to said Fenn, as well as the condition of the title to and encumbrances upon the same at the date of said contract.

Said Fenn further admits that at the date of said sale of said lands to said Green he was in failing circumstances, in debt, and in failing circumstances, and that his creditors were pressing him for payment, and supposes said Green knew that to be the fact, and that he, said Fenn, at that time was on the eve of making an assignment or was then contemplating such a course of procedure. But respondent expressly denies that said sale and conveyance to said Green were not made in good faith, but by collusion between said Fenn and said Green for the purpose of placing said Fenn's interest in said land out of and beyond the reach of any execution which might be issued upon any judgment which might be obtained against said defendant Fenn, with intent to hinder and delay the creditors of said Fenn and with
40 the intent and for the purpose of enabling said Green to buy up the outstanding obligations or notes of said Fenn at a great discount, for the benefit of said Fenn and Green, or one or both of them, and that said sale and conveyance were fraudulent as to anybody

Respondent expressly states and avers that said sale to said Green was made by said Fenn in good faith and with direct and express reference to the good of the creditors of said Fenn.

Respondent admits that said Green did expect, when he so purchased said lands under said incumbrance, that he would be able to pay respondant's notes and obligations up at a discount, and would be obliged to do so in order to save himself from loss in so purchasing said lands; that since said sale to said Green said lands have depreciated in value, so that, in the judgment of your respondent, they would not sell at the present time for the amount of said incumbrances, and is informed that sa d incumbrances have not been removed or in any way paid off by said Green, but, on the contrary, a part of the said lands have been sold and taken possession of under and by virtue of said deeds of trust, &c., as respondent is informed and believes.

This respondent, further answering, says that he knows of no money, notes, accounts, lands, property, or effects of any kind, either real, personal, or chattels real in the possession or under the control of said defend-
42 ants Green, Robbins, or Thompson belonging to said William Fenn, or in which he is in any way beneficially interested, excepting under and by virtue of said assignment to said Robbins.

Respondent knows nothing about the motives of complainants in filing their said bill of complaint, but suppose said bill to have been filed in good faith for the purposes set forth in said bill, and avers that said bill was not filed by any collusion with him, said respondent.

This respondent, the said defendant William Fenn, further answering, says that he has an interest in the following goods and chattels and real estate, which are not mentioned in said assignment, to the extent following, to wit:

1st. An equitable interest in the amount of about ($300) three hundred dollars in a certain house and lot in the city of Lacon aforesaid, formerly owned by one Leonard Holland and deeded by him to Ira J. Fenn, which lot is described as follows, to wit: All of lot one and fractional lot four in block seventy-six, as numbered and designated on the plat Efner and Boal addition to Lacon, excepting one hundred and three and a half feet off the west end of said lot one and said fractional lot four; also the fraction or frac-
tions of land on the east side of the alley in said block opposite said
41 lots one and four, said fractions being numbered two and three in said block, situate in the city of Lacon, county of Marshall and State of Ill., and being the same where said Fenn resides.

2d. A quarter interest (equitable) in the northeast quarter of section (19) nineteen, in township (12) twelve north, of range (4) four west of fourth principal meridian, situate in the county of Henderson and State of Illinois, the title to which is imperfect and unsettled; the said land being uncultivated prairie land.

3d. A partnership interest in the firm of G. H. Ganbert & Co. in a quantity of lands in Iowa, which lands are heavily mortgaged, probably for considerably more than they would bring or are worth at any reasonable valuation, to wit, for the sum of ten dollars an acre, which was the purchase price for same.

4th. An unliquidated interest, to the amount of about seventy-five dollars, in a quantity of stock in the Peoria Marine and Fire Insurance Co., of Peoria, Illinois, upon which stock the said seventy-five dollars was paid by me, the same being one per cent. on the whole amount of stock, which stock cannot be transferred until whole is paid up, and which stock, if not paid, will be forfeited under the rules of said company.

5th. A contingent interest of about one hundred and five dollars in a quantity of household furniture, which my family was using in said Lacon

43 at the date of said assignment, and which was worth probably about ($300) three hundred, which furniture has a chattel mortgage upon it to Leonard Holland as a collateral to secure the payment to said Holland in a matter of endorsement, together with what said Fenn was then indebted to said Holland, which indebtedness and liability have since been removed, except the aforesaid am't of one hundred and five dollars, which said Fenn is still owing said *said* Holland.

6th. One cow, worth about fifteen to twenty dollars.

7th. One watch.

8th. A verbal claim for ten dollars' worth of wood against P. S. Rechey, of this county, viz., Marshall County, Ills.

9th. One half interest in 80 acres of swamp land in said Marshall County, which was bought at 80 cents an acre at public sale.

Respondent in answer to the said interrogatory 1st, 2d, and 3d, as set forth in said bill of complaint, says the amount of merchandize sold and transferred as aforesaid by him to said Samuel Thompson was eighteen thousand six hundred thirty-nine dollars and ninety-six cents; that said stock of merchandise consisted of a general assortment, suited to the market of said Lacon, of dry-goods, groceries, hardware, queensware, boots, shoes, hats, caps, ready-made clothing, &c.

44 Said sale to said Thompson of said goods by said Fenn was on or about the 10th day of Dec., A. D. 1857. The terms and conditions of said sale were that said Thompson was to take the goods at the aforesaid sum of ($18,639 96) eighteen thousand six hundred thirty-nine and ninety-six cents, which was the amount of the invoice of same taken at that time, for which said Thompson was to pay said Fenn as a full consideration for the said stock of goods twenty bonds of one thousand dollars each, nine of which bonds were city of Lacon bonds, drawing ten per cent. per annum interest, and eleven of which were Marshall County bonds, drawing six per cent. per annum interest; beside said bonds said Thompson was to let said Fenn have, out of the store composed of said stock and other goods that said Thompson might thereafter purchase, the sum of one thousand dollars in goods or upon his, said Fenn's, order at retail prices, which amount said Fenn has since received in payment of due bills given by said Fenn previously to said sale payable in goods; a small portion of which has been used by said Fenn's family, but a large portion has gone to pay small debts of said Fenn, the amount of which was not known at the time of assignment, upon the payment of which bonds to said Fenn by said Thompson

45 said Fenn was to deliver up full and immediate possession of said stock of goods and merchandise, both of which conditions were then *then* and there carried out and fulfilled in good faith by both parties to said contract of sale.

That the said bonds, the avails of said sale, have been disposed of as follows by said Fenn, to wit: Five of said Marshall County bonds were turned out to and placed in the hands of Enos V. Robbins and Leonard Holland as collaterals to secure the perfecting of the title to the southwest quarter of section four in township twelve north, of range eight east of the fourth principal meridian, and the southwest quarter of section twenty-five in township thirteen north, of range eight east of the fourth principal meridian, in the county of Marshall, Illinois, which land said Fenn had previously sold to said Robbins and Holland, and conveyed the same to them by a deed of general warranty, the title to which land is now in litigation, for which land said Robbins & Holland paid said Fenn the sum of forty-eight hundred dollars. All of which will more fully appear by reference to the said deed of assignment, a copy of which is herewith filed and marked "Exhibit A," to which particular reference is hereby made.

46 Six of said bonds were paid by said Fenn to the Peoria Marine and Fire Insurance Company in settlement of an unadjusted claim which said company held against said Fenn.

Three of said bonds were paid by said Fenn to W. L. Crane & Co., of Lacon aforesaid, in payment of a claim said company had upon said Fenn as a member of the old firm of Fenn, Crane & Co., of said Lacon.

Three of said bonds were paid to Enos V. Robbins, assignee as aforesaid of said Fenn, before said assignment was made, as a bonus or extra consideration, upon which, and only upon which, said Robbins would accept and take upon himself the duties and responsibilities of assignee in bankruptcy of said Fenn.

And three of said bonds were included in the said assignment to said Robbins, they being the only bonds included in said deed of assignment as the others aforesaid had been paid out as aforesaid before the said assignment was made.

To the 2d of complainants' interrogatories respondent says: The nature, kind, value, quantity, and description of the property and effects included in said assignment to said Robbins, and the terms of the said assignment are fully and at large set forth in said deed of assignment, a copy of
47 which is, as aforesaid, filed herewith and made part hereof and especially hereby referred to.

As to what has been done under said assignment with the property and effects so assigned by said Enos V. Robbins, said assignee, this respondent is not advised; therefore cannot answer.

Respondent, further answering, says that the number of acres sold as aforesaid to said Green was forty-seven hundred thirty-eight acres, as well as respondent can recollect; some of the sections above enumerated being fractional, overrun the exact amount of 640 acres to the section; that the value, description, and terms of sale of said land to said Green, as well as the time when and the manner in which said Green was to pay said Fenn for the same, are all fully and particularly set forth in the agreement made by said Green to said Fenn as above herein copied and set out, to which copy especial reference is hereby made as a full answer to complainants' 3d interrogatory.

Said respondent, William Fenn, having fully answered the said complainants' bill of complaint, prays to be hence dismissed with his costs.

WM. FENN.

HOYNE, MILLER & LEWIS, *Sols. for def't Fenn.*

48 STATE OF ILLINOIS, *County of Marshall, ss:*

William Fenn, being first duly sworn, doth depose and say that he signed the foregoing answer; that the matter and things therein contained as stated upon information and belief, he believes to be true as therein stated, and that the other matters stated in said answer are true in substance and in fact.

WM. FENN.

Subscribed and sworn to before me this 6th day of Nov., A. D. 1858.
[SEAL.] MARK BANGS, *Notary Public.*

Endorsed: Filed Dec'r 20th, 1858.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the twenty-eighth day of December, A. D. 1858, came said defendant, Enos V. Robbins, by Messrs. Hoyne, Miller & Lewis, his so-

licitors, and filed in said clerk's office his answer in said entitled cause; which said answer is in the words and figures following, to wit:

United States of America, circuit court of the United States for the seventh circuit and northern district of Illinois, in chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

JAMES MYERS, WILLIAM KINSLEY AND CHARLES STOUT
vs.
WILLIAM FENN, ENOS V. ROBBINS, SAMUEL THOMPSON, AND WILLIAM B. GREEN. } Creditors' bill.

The several answers of Enos V. Robbins, one of the defendants, to the bill of complaint of James Myers, William Kinsley, and Charles Stout, complainants, against this defendant, and William Fenn, Samuel Thompson, and William B. Green, defendants.

This defendant, now and at all times saving and reserving to himself all and all manner of benefit and advantage of exception to the errors and imperfections contained in the said bill of complaint of said complainants, for answer thereto, or to so much thereof as he is advised it is material for him to make answer unto, he, answering, admits that he is informed, and supposes it may be true, that in the term of May, in the year of our Lord one thousand eight hundred and fifty-eight, in the circuit court of the United States for the seventh circuit and northern district of Illinois, a judgement
50 was recovered by said complainants, James Myers, William Kinsley and Charles Stout, against said defendants William Fenn, in the sum of eleven hundred and fifty-two dollars and thirty-nine cents, together with their costs and charges about their suit in that behalf expended; that while said judgment was in full force, and together with said costs and charges wholly unpaid, to wit, on or about the 3d day of June, A. D. 1858, said complainants, for the purpose of obtaining satisfaction of the said judgement sued and prosecuted out of said court a writ of the people, called a fieri facias, directed to the United States marshal for the northern district of Illinois, the district in which said defendants resided at the time of the issue of said writ, by which said writ *by which said writ* the said marshal was commanded that of the goods and chattels, lands, and tenements of said William Fenn, one of said defendants, he cause to be made the sum of eleven hundred and fifty-two dollars and thirty-nine cents, which complainants recovered in said court as aforesaid, and that he should have the money at the clerk's office of said court, at Chicago, in said district, in ninety days, to satisfy the said judgment.

That said writ of fieri facias before the delivery thereof was duly endorsed, and was afterwards, and on or about the third day of June, A. D. 1858, delivered to said marshal to be executed in due form of law. However,
51 this respondent knows nothing about said judgment, or the issue, endorsement, and delivery of said writ of fieri facias, except from information and the said bill of complaint.

Respondent further answers that he is informed, and supposes that it may be, perhaps, true, that said marshal of the district aforesaid, on the thirteenth day of May, A. D. 1858, returned on the said writ, to him in that behalf directed and delivered as aforesaid, that he had tried to find the within-named William Fenn to make a demand upon him for money or property to satisfy that execution, but had been unable to do so, and had made inquiry of persons who were acquainted with said William Fenn whether he had any property, and had been informed that he had made an assignment, and that he had no property whatever; nor had the said marshal found any prop-

erty on which to levy, and that the said execution was therefore wholly unsatisfied, although this respondent does not fully understand how or in what manner said writ of fieri facias could possibly be issued on the third day of June and be returned on the 30th day of May in the same year.

This respondent, further answering, admits that he is informed, and believes it be true, that the said judgment still remains in full force and effect, not reversed or satisfied, or otherwise vacated, and that the said William Fenn or any other person has not paid the same or any part thereof, to
52 said complainants, and that there is now due actual and equitable to said complainants upon the aforesaid judgment the sum of eleven hundred and fifty-two dollars and thirty-nine cents, with the interest thereon from the 4th day of May, A. D. 1858, over and above all just claims of said defendant by way of set-off or otherwise.

This respondent, further answering, says that he knows that said William Fenn was on or about the tenth day of December, A. D. 1857, and had been for some considerable time previously, engaged in the mercantile business at the city of Lacon, in the county of Marshall and State of Illinois, in the district aforesaid; and respondent is also informed and believes that in the course of said mercantile business of the said defendant William Fenn divers persons became indebted to him to a considerable amount, but how large an amount the respondent is unable to say.

That this respondent knows nothing about debts due to said Fenn at the time of filing said bill of complaint, for which he, said Fenn, holds divers claims, securities, and evidences to a large amount, or to any amount, nor does this respondent know anything about any goods, wares, and merchandize, or other articles of personal property which belong to said Fenn, or in which he is in any way interested, or in which he has any equitable
53 interest, or for which he has any right of action of any kind or nature.

Respondent further says that he knows of no real estate or chattels real, or any contract or agreement relating to real estate, or the rents, issues, and profits of any real estate, or of the stock of any company, whether incorporated or uncorporated, or the profits of any company or copartnership of which said William Fenn is the owner, or in which he is in any way or manner beneficially interested, in this State or any other State.

That this respondent knows of no money, in coin or in bank bills, that said defendant Fenn had in his possession at the time of filing said complainants' bill of complaint.

Respondent knows of no money deposited by said Fenn in any bank or elsewhere to his credit, or that he had money or securities for the payment of money held by some other persons in hand or otherwise for his benefit.

As to whether said defendant Fenn has property in other effects to the amount of five hundred dollars, or any greater or less sum, exclusive of all prior just claims thereon, this respondent is not informed, and does not know.

Nor does respondent know by what motives said complainants were actuated in filing their said bill of complaint against said defendant, but
54 presumes it to be true, as stated in said bill of complaint, that it was not done by collusion with any of said defendants, as it certainly was not so done with this respondent.

Your respondent, further answering, says that he is informed and believes that having been for a considerable time theretofore in the mercantile business in the city of Lacon and county of Marshall, in the State of Illinois, and being then and there the owner of a stock of merchandize probably of the value of not far from eighteen thousand dollars, he, said Fenn, did on or about the tenth day of December, A. D. 1857, or very soon thereafter, make a sale and transfer of the whole of his said stock of merchandise to said defendant Samuel Thompson for the sum of eighteen thousand dollars, and

took his pay in Lacon City and Marshall County bonds, and that at the time of said sale said Fenn was greatly in debt, embarrassed, and in failing circumstances. But whether Samuel Thompson knows that was the case this respondent does not know, but presumes that said Thompson had heard reports and talk to that effect in the community where said Fenn at that time resided. This respondent, further answering, would state that he knows nothing positively of the motives under and by which said Fenn was
55 moved to make said sale or under and by which said Thompson accepted the bargain, but supposes and believes the same to have been made in good faith, and not by collusion or for the purpose of placing the property and effects of said Fenn beyond the reach of any execution that might be issued upon any judgment which might thereon be obtained against him, or for the purpose of giving control of said property and effects to said defendant Fenn.

This respondent, further answering, admits that said William Fenn, being as aforesaid greatly indebted, embarrassed, and in failing circumstances, on or about the 30th day of December, A. D. 1857, and but a short time after said sale to said Thompson, did make, execute, and deliver to this respondent, Enos V. Robbins, a deed of general assignment for the benefit of his, said Fenn's, creditors of all and singular the lands and tenements and hereditaments, real estate and chattels real of him, said Fenn, and also all the goods, wares, and merchandise, personal property, chattels and effects belonging to said Fenn, and also all and singular the debts, sums of money, balance of accounts, promissory notes, bills of exchange, drafts, bonds, stocks, judgements, and all other securities, claims, and demands then belonging, due, or payable to said defendant William Fenn; which said
56 deed of assignment was then and there duly executed by said William Fenn and his wife, authenticated and delivered to the respondent, and was duly filed on the 8th day of January, 1858, at 7 o'clock in the afternoon, for record, and was duly recorded in Book X at pages 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16, in the recorder's office within and for said county of Marshall and State of Illinois, a copy of which deed of assignment and the schedule thereto attached is hereto attached and made part of this answer, and marked Exhibit A, which special reference is herein and hereby especially made. Further answering, this defendant, Enos V. Robbins, so far as his intention, information, knowledge, or belief extends, denies particularly and positively that said deed of assignment did not include and convey, and was not intended by said Fenn to include and convey, for the uses and purposes expressed therein, all of the property and effects of said Fenn, or that Fenn reserved and kept back for his own use and benefit a large amount of money, personal property of any kind, or notes, evidences of debt, bonds, drafts, checks, bills of exchange, or accounts, or that said assignment was not made in good faith, but by collusion between said defendant Fenn and defendant Robins for the purpose of placing the property and effects of said Fenn out of and beyond the reach of any exe-
57 cution which might be issued on any judgment which might be obtained against said Fenn, with intent to delay and hinder the creditors of said Fenn on that said assignment, is void. On the contrary, this respondent is informed and believes, and has never had any good reason to doubt, that said Fenn did in good faith include and convey, and intend to include and convey, by said deed of assignment, all of his property and effects of every kind and nature in law and equity in possession and in action.

Respondent further states that as to himself he accepted the trust imposed by said deed of assignment at the express solicitation of said Fenn, and did accept and enter into the same, and prosecute under and by virtue of the same in good faith, and still continues so to act in good faith; and he ex-

pressly denies that he accepted or entered into or has since acted under the same for any purpose whatever to delay or hinder the collection by any creditor or creditors of said Fenn, his or their claims or demands, or that he entered into the same with any bad faith or fraudulent intent to any person or persons or by any collusion with defendant Fenn or any other person or persons whomsoever. Further answering, this respondent expressly and absolutely denies that he has now or at any time since the date of said
58 assignment has had in his possession or under his control, except under and by virtue of said assignment and particularly set forth in the same, any money, notes, accounts, lands, property, and effects of any name or kind, either real or personal or chattels real, which belong to said Fenn or in which he is in any or manner beneficially interested; and further, that he knows of no person or persons who has, nor has he any good reason to believe that any person or persons have, so in their possession or under his or their control any of said Fenn's property or effects. Defendant Robbins further answers that the nature, kind, value, quantity, and description of the property and effects included in said assignment from defendant Fenn to defendant Robbins is fully and at length in the said schedule attached to said deed of assignment, a copy of which, as aforesaid, is hereto attached, to which special and particular reference is hereby made, and the same is hereby made part of this answer; that the terms and conditions of said assignment are fully and at large set out in said deed of assignment, of which a copy, as aforesaid, is hereto attached and made part hereof and especially referred to.

Respondent, further answering says, that as to "what has been done under" said assignment and "what has been done with the property and effects included therein or the avails thereof," he has gone on under
59 the same and done what he could towards carrying out the intention of the same and fullilling the conditions, obligations, and duties therein contained and included and has arranged, adjusted, rec'd, and settled offsets against the accounts set forth in said deed of assignment to the amount of about five thousand four hundred fifty dollars and ninety-seven cents $5,450 97

That he has paid *in* bills receivable on the debts mentioned in class No. one, in Schedule B, in said deed of assignment, as follows, to wit:

Paid to estate of	John K. Moore, dec'd	$900 00	
" "	Mrs. Brown	684 78	
" "	A. S. Fishburn.....	217 16	
" "	John Southworth, (in bonds).....	3,000 00	
Making in all so paid the sum of			4,791 94
The whole amount so adjusted and paid amounts in all to the sum of.....			10,242 91
Besides, the above respondent has collected on said accounts, together with twenty dollars received for rent, the sum of seventeen hundred and nine dollars and sixty-four cents in cash.....			1,709 64
And has paid out of said cash so collected as follows to wit:			
For expenses under said assignment.....			503 60
The amount paid in cash on debts included in said class No. one, in Schedule B, as follows, to wit:			
60 For taxes ass'd before assignment.....		$386 84	
To Mrs. Gibson.....		5 00	

To James Hall on jud't.....	$130 00
Joseph Duell "	122 80
Am't costs in suit by Todd and others.....	24 57
Making in all paid in cash the sum of.....	1, 207 41
Which leaves amount of cash on hand to be.....	502 28

Which is less than the amount this respondent claims as his reasonable commission, costs and charges as assignee aforesaid. This respondent, answering further, says he is informed, and believes the same to be true, that some time in the month of December, A. D. 1857, after said sale to said Thompson, and before the date of said assignment, the said defendant William Fenn did sell his interest in a large tract of land, to wit: about forty-seven hundred and fifty acres, situated, as respondent is informed and believes, in the county of Vermillion, in said State of Illinois, to said defendant William B. Green, and conveyed said interest to said Green by deed; that said Green agreed to pay said Fenn for said interest so deeded fifteen thousand dollars of said Fenn's outstanding unpaid paper; that said land was heavily incumbered, and that said Green bought the same, subject to said incumbrance, for the said sum of fifteen thousand dollars of said Fenn's notes, or obligations of said Fenn then outstanding, at par.

61 This defendant supposes it to be that said Green at the time of said purchase knew or suspected or had cause to suspect that said Fenn was in embrased and failing circumstances; that his debtors were pressing him for payment, and that said Fenn was then on the eve of making an assignment, or that such was the current opinion, but as to the motives of said Fenn or said Green in making contract for said land this respondent knows nothing, but supposes and believes the said sale was made and entered into in good faith both by said Fenn and said Green and not for the purpose of placing said Fenn's interest in said land out of and beyond the reach of any execution which might be issued on any judgment which might be obtained against said defendant Fenn, or to hinder and delay the creditors of said Fenn. Respondent further says he believes it to be true that said Green did expect that he could buy up said Fenn's outstanding obligations at a great discount, for as a matter of fact said obligations at the date of said sale were offered and could easily be purchased at a great discount, but whether said Green expected or intended to buy up said claims for the benefit of said Fenn or not he cannot state, but believes not.

Respondent is informed and believes that the said tract of land so conveyed to said Green by said Fenn was about forty-seven hundred and fifty acres; don't know what said lands are worth, but is of the opinion

62 that they would not have sold at the date of said sale to Green for cash for the amount of the incumbrance then on them.

The description of said lands is substantially as follows, as nearly as respondent can ascertain, to wit: all of sections twenty-one, twenty-three, twenty-seven, and thirty-five, in township twenty-six north, of range nine east; also sec. three, seventeen, and the south half of sec. eight, in township twenty-five north, of range nine east of the third principal meridian; all of aforesaid lands being in the county of Vermillion and State of Illinois.

The terms of said sale from said Green were substantially as heretofore stated. Said Fenn was to be paid, likewise, in the way and manner hereinbefore set forth to wit: said Green was to buy up or in some other way obtain and deliver up cancelled to said Fenn fifteen thousand dollars of said Fenn's outstanding or obligations within nine months from the date of said sale, and said Green gave his written obligation to that effect. And this respondent denies all combination, confederacy, collusion, bad

faith, fraudulent intent charged against him in said bill, without that, that any other matter or thing in said bill of complaint contained and not herein and hereby well and sufficiently answered unto, confessed and avoided, traversed or denied, is true to his knowledge or belief. All which
63 matters and things this respondent is ready to aver, prove, and maintain as this honorable court shall direct, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

ENOS V. ROBBINS.

HOYNE, MILLER & LEWIS,
Solicitors and of Counsel for Def't Enos V. Robbins.

STATE OF ILLINOIS, *County of Marshall, ss:*

Enos V. Robbins, the said respondent, and one of said defendants, whose name is subscribed to the aforesaid answer, personally appeared before me this 18th day of September, A. D. 1858, and, being duly sworn, says that he is the person whose name is so subscribed, and who makes the foregoing answer; that all the matters and things as therein stated and set forth are true in substance and in fact.

ENOS V. ROBBINS.

Subscribed and sworn to before me this 18th day of Sept., 1858.

[SEAL.] MARK BANGS, *Notary Public.*

64 EXHIBIT A.

This indenture, made this thirtieth day of December, in the year of our Lord one thousand eight hundred and fifty-seven, between Wm. Fenn, of the city of Lacon, in the county of Marshall and State of Illinois, of the first part, and Enos V. Robbins, of said Lacon, of the second part.

Whereas the said party of the first part is indebted to sundry persons in divers sums of money which he is unable to pay, and has agreed to convey and assign all his estate and effect for the benefit of his creditors, as hereinafter mentioned:

Now this indenture witnesseth, that the said party of the first part, in consideration of the premises and of the sum of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, transferred, and set over, and by these presents doth grant, bargain, sell, assign, transfer, and set over, unto the said party of the second part, his heirs, executors, administrators, and assigns, all and singular the lands and tenements, and hereditaments, real estate, and chattels real of the said party of the first part, and also all the goods, wares, and merchandise, personal property, chattels, and effects belonging to the said party of the first part, and also all and singular the debts, sums of money, balance of account, promissory notes, bills of exchange, drafts, bonds, stocks, judgments, and other securi-
65 ties, claims and demands now belonging, due or payable, or to become due or payable, to the said party of the first part, of which said real estate, chattels real, personal property, effects, debts, securities, claims, and demands, a schedule is hereunto annexed, marked "Schedule A;" and also all the books of account of the said party of the first part, and all papers, documents, and vouchers relating to his business dealings, property and affairs. To have and to hold the same and every part and parcel thereof unto the said party of the second part, his heirs, executors, administrators, and assigns. In trust, nevertheless, and to and for the uses, interest, and purposes following; that is to say, that the said party of the second part shall take possession of the said property hereby assigned or intended so to be, and shall with all convenient dilligence sell and dispose

of the same at public or private sale, as he may deem most beneficial to the interest of the creditors of the said party of the first part, and convert the same into money, and shall also with all reasonable diligence collect, get in, and recover all and singular the said debts, due bills, bonds, stocks, notes, accounts and balances of accounts, judgements, securities, claims, and demands hereby assigned or intended so to be; and with and out of the proceeds of such sales and collections that the said party of the second part shall first pay and disburse all the just and reasonable expenses,
66 costs, charges, and commissions attending the due execution of these presents and the carrying into effect the trust hereby created, together with a reasonable and lawful compensation or commission for his own services; and with or out of the residue, or net proceeds of such sales and collections, the said party of the second part shall pay and discharge the debts due and owing by the said party of the first part in the order and manner following; that is to say—

First. The said party of the second part shall pay all and singular the debts set for thand enumerated in a schedule of debt hereto annexed, marked "Schedule B," and designated in said schedule as class number one, the same to be paid in full, with lawful interest, if the said proceeds shall be sufficient for that purpose, and if the same be not sufficient, then the said party of the second part shall apply the said net proceeds to and in the payment of the said debts rateably and in proportion to the respective amounts thereof.

Secondly. After the payment in full of all of the debts designated in said Schedule B, as class number one, in manner above directed, the said party of the second part shall pay in full all and singular the debts enumerated and designated in said Schedule B, as class number two, if there be sufficient of the said net proceeds remaining in his hands for that purpose, and
67 if there be not sufficient, then the said party of the second part shall apply the same, so far as they will go for that purpose, to and in the payment of the said last-mentioned debts rateably and in proportion to the respective amounts thereof.

Thirdly. After the payment in full of all the debts designated in said Schedule B as class number two, if there should be any residue or surplus of the said net proceeds remaining in his hands, the said party of the second part shall with and out of said residue pay in full all and singular the debts enumerated and designated in said Schedule B as class number three, if there be sufficient of said residue for that purpose; and if there be not sufficient, then the said party of the second part shall apply the said residue to and in payment of the said last-mentioned debts rateably and in proportion to the respective amounts thereof.

Fourthly. After the payment in full of all the debts designated in said Schedule B as class number three, in manner above directed, the said party of the second part shall use and apply the rest and residue of the said net proceeds, if any there be, in and towards the payment of all the debts designated in said Schedule B as class number four equally and rateably and without distinction or preference.

Lastly. After the payment of all the costs, charges, and expenses
68 attending the execution of the trust hereby created, and the payment and discharge in full of all the lawful debts due and owing by the said party of the first part, of any and every kind and description, if any part or portion of the proceeds of said sales and collections shall remain in the hands or control of the said party of the second part, his executors, administrators, or assigns, he or they shall pay and return the same to the said party of the first part, his executors, administrators, or assigns, and if after the payment in full of all the debts there should remain in the hands or possession of the said party of the second part, his executors, administrators,

or assigns, any part or portion of the property and effects hereby assigned, which shall not have been sold, collected, or converted into money, he or they shall return, reassign, and redeliver the same to the said party of the first part, his heirs, executors, and administrators or assigns.

And for the better and more effectual execution of these presents, and of the trust hereby created, reposed, the said party of the first part doth hereby make, constitute, and appoint the said party of the second part his true and lawful attorney, irrevocably, with full power and authority to do, transact, and perform all acts, deeds, matters, and things which may be necessary in the premises, and to the full execution of the said trust, and for the pur-
69 poses of the said trust, to ask, demand, recover, and receive of and from all and every person and persons all the property, debts, and demands belonging and owing to the said party of the first part, and to give acquittances and discharges for the same, and to sue, prosecute, defend, and implead for the same, and to execute, acknowledge, and deliver all necessary deeds and instruments of conveyance, and also for the purposes aforesaid, or any part thereof, to make, constitute, and appoint one or more attorneys under him, and at his pleasure to revoke the same, hereby ratifying and confirming whatever the said party of the second part or his substitutes shall lawfully do in the premises. And the said party of the second part doth hereby accept the trust created and in him reposed by these presents, and doth for himself, his heirs, executors, and administrators, hereby covenant and agree to and with the said party of the first part, his executors, administrators, and assigns, that he, the said party of the second part, will honestly and faithfully, and without delay, execute the same according to the best of his skill, knowledge, and ability.

In witness whereof, the parties to these presents have set their hands and seals the day and year first above written, and also the hand and seal of Mary B. Fenn, wife of the said William Fenn, who hereby relinquishes her dower in the lands disencumbered in said Schedule A before
70 named.

WM. FENN. [SEAL.]
MARY B. FENN. [SEAL.]

Signed, sealed, and delivered in presence of—
ENOS V. ROBBINS. [SEAL.]

STATE OF ILLINOIS, *County of Marshall, ss:*

I, Mark Bangs, notary public of the city of Lacon, within and for the county of Marshal, aforesaid, do certify that on this day personally appeared before me William Fenn, whose name appears subscribed to the foregoing deed of assignment as having executed the same, who is personally known to me to be the real person who and in whose name the acknowledgment is proposed to be made, and acknowledged the execution thereof as his voluntary act and deed, for the uses and purposes therein expressed; and Mary B. Fenn, wife of said William Fenn, having been by me made acquainted with the contents of said deed of assignment, and by me examined separate and apart from her said husband, whether she had executed the same and relinquished her dower to the lands and tenements in said Schedule "A" hereto attached, acknowledged that she had done so voluntarily and freely, and without compulsion of her said husband, and does not wish to retract.

71 Also, personally appeared before me on this day Enos V. Robbins, whose name appears signed to said deed of assignment, and who is personally known to me as the identical person whose name is so signed to

said deed, and acknowledged that he had signed the same and accepted the trust set forth in said assignment as his free act and deed.

Given under my hand and official seal this 30th day of December, A. D. 1858.

MARK BANGS, *N. P.*

Schedule A, referred to in the foregoing assignment.

Real estate described as follows, to wit:

Lot six in block three, the north half of lot six in block forty-nine in the in the town of Lacon; lot six in block eighty-two, in Devores and Henthorn's addition to the town (now city) of Lacon, in the county of Marshal and State of Illinois. Said north half of lot six, being in Babb and others' addition to the said Lacon, has an execution levied upon it against Fenn, Perry & Dodds, at the suit of Todd, Todd and others, debt assumed by Perry & Dodds. Lot three in block eighty, in Ball's addition to said Lacon, also the unde— half of a fraction of land beginning at a stake at the north end of Water street, in the town of Lacon on the west side thereof on the line of the south-
72 east quarter of section twenty-six in township thirty north, in range three west of the third principal meridian, running thence south on the west line of Water street to Tenth street, thence westward in the direction of Tenth street four hundred feet to a stake, thence northward parallel with Water street to the north line of the said quarter section, thence eastward on the north line of said quarter section to the place of beginning.

Also an undivided eleventh part of the real estate of which George Sparr, dec'd, late of said county of Marshall, died seized, excepting so much of said real estate as was sold to pay the debts of said Sparr after his decease, which undivided eleventh was decreed to said Fenn by the circuit court of said county, at the April term of said court, A. D. 1857, to which decree the records of said court and the records of said real estate reference is hereby made.

Also lot five in block seventeen in said Lacon, and eight feet of the north side of said lot eight in said block seventeen, excepting twenty feet of the east end of said lot eight, which is owned by Washington E. Cook. Also the following described land, to wit, being a part of the northeast fractional quarter of section twenty-six, in town thirty north, of range three
73 west of the third principal meridian, bounded and described as follows, begining at the north end of Water street in the town of Lacon on the west end thereof, on the south line of said fractional quarter section, and running thence northward pursuing the course of said Water street to a post set for a corner two hundred and sixty-four feet from Tenth street of said town of Lacon, thence westward on a line paralell with Fifth street to the Illinois River, thence down said river with its meanderings southward to the south line of said fractional quarter section, and thence east with the south line of said fractional quarter section to the place of beginning, at the north end of Water street aforesaid.

Lands in the State of Iowa, to wit: The west half of the southeast quarter and the northeast of the southwest quarter of section twenty-three, in town. seventy-eight north, of range thirty-six west.

Also the southwest quarter of the northeast quarter and the west half of the southeast quarter of section ten, in town seventy-nine, in range thirty-five, all in the county of Audubon and State of Iowa.

Also the following real estate. The northeast quarter of the northwest quarter section twenty-five, in township thirty north, of range three
74 west of the third principal meridian, excepting so much of said tract as is owned by Washington E. Cook, being the same tract of land

heretofore surveyed and subdivided by Thos. Patterson, situated in the county of Marshal, and State of Illinois, being thirty-five and 78-100 acres of land, be the same more or less.

Whereas William Fenn purchased of J. S. Fancher, of the city of New York, the southwest quarter of section 4, in township 12 north, of range 8 east of the fourth principal meridian, and the southwest quarter of section 25, in township 13 north, of range 8 east of the fourth principal meridian, in the county of Marshal and State of Illinois, and received of said Fancher a deed of conveyance for the same, with full covenants of warranty, dated May 1st, 1857; and whereas said Fenn, as a consideration for said land, gave, with Silas Ramsey, to said Fancher three joint promissory notes, payable in one, two, and three years from the said first day of May, 1857; said notes were for eight hundred dollars each, drawing six per cent. per annum interest.

Said Fancher also gave said Fenn his bond obligating himself to make the title to said lands perfect. And whereas said Fenn has since said first day of May, sold said lands to Enos V. Robbin and Leonard Holland, for forty-eight hundred dollars, which said Fenn has received. And said Fenn has given said Robbins and Holland a warranty deed for said land
75 and has further agreed verbaly with said Robbins and Holland, that he, said Fenn, will put said Robbins and Holland in peaceable possession of said lands with a perfect title to the same, within nine months from the time said Fenn sold the same to said Robbins and Holland, which was about the first of October, 1857, the said title being in dispute, and the said lands being occupied and in the actual possession at the present time of other persons, who claim the same under title adverse to the one derived from said Fancher.

And whereas, further, in consideration of the imperfection of the title to said land and the uncertainty which rests upon the same, said Fenn has placed in the hands of said Robbins and Holland five bonds, for one thousand dollars each, made by the county of Marshall aforesaid, and commonly known as Marshall County bonds, as collateral security for the performance of said agreement to make said titles to said land perfect, and to further comply with the covenants in the said deed from said Fenn to said Robbins and Holland, and also to put said Robbins and Holland in peacable possession within the nine months aforesaid:

Now, therefore, know all men by these presents that we, the said Enos V. Rollins and Leonard Holland, do hereby obligate ourselves, our heirs, and assigns, that upon the fulfillment of the said promises, obligations, and undertakings by said Fenn, his heirs, executors, administrators, assigns,
76 or assignee, on his part promise and agreed with said Robbins and Holland, we, the said Robbins and Holland will convert the said bonds into available means as soon as practicable after said title to said land shall have been made perfect, and pay off with said means the above-mentioned three promissory notes of $800 each, and return the residue arising from the proceeds of said county roads to said William Fenn, his heirs or assigns, provided there shall be any such residue.

However, in case the said title to said lands shall not be perfected as aforesaid, and we are not put into peacable possession of the same as above stipulated, then, and in that case we are to keep and retain said county bonds unconditionally, in lieu of the above-mentioned forty-eight hundred dollars paid by said Robbins and Holland to said Fenn for said land, and we, in that case, agree to deed back said bonds by deed of just claim to said Fenn or his assigns, or in any other manner, or to any other person or persons that a proper adjustment of this matter may require, provided that we are in no case to relinquish said bonds or take said lands unless the *the* title to the same shall be made perfect, and the possession conferred as herein above set forth.

Provided, further, that in case of compromise of the conflicting titles to said lands shall be effected by and between the parties interested in the same, and any notes or obligations shall be taken for the interest under the
77 title from said Fancher, then said Robbins and Holland shall take said notes as obligations so received and relinguished on equal amount of secured county bonds.

In testimony whereof, we, the said Robbins and Holland, have hereunto set our hands and seals this tenth day of December, A. D. 1857.

ENOS V. ROBBINS. [SEAL.]
LEONARD HOLLAND. [SEAL.]

List of notes due to said Wm. Fenn from divers persons, as follows:

Brainard, C. H., date Nov. 12, 1857	$15 86
Benson, Henry, date Oct. 16, 1857	16 40
Baker, Charles, date Feb. 19, 1852, (see Green)	1 50
Beals, John, and Bixber, Kirbin, joint note, July 14, 1849	22 61
Rosley, Amon, date May 19, 1853	15 00
Bennet, W. J., (M. D.,) date Oct. 1, 1852	5 65
Brewer, John, date Jan. 27, 1857	6 63
Cartwright, J. B., date Jan. 29, 1856	56 95
Carvenchael, T. E., Fields, John H., joint note, date Sept. 10, 1857	12 85
Caldwell, Wm., date Jan. 6, 1856	11 35
Campbell, Lawrence C., date Feb. 27, 1855, (Starkes)	15 49
Delein, Wm., date Nov. 10, 1848	10 00
Dustan, Philo S. N., date Oct. 15, 1852, (California)	23 16
Davis, Milton, date Sept. 18, 1851	26 93
78 Dickinson, David, date June 17, 1846, (about bal.)	5 00
Dodds, Joseph L., date Dec. 21, 1857, payable in Wm. Fenn's paper at par	1,507 00
Frazer, Joseph, note, date June 25, 1853, 10 97; indorsed Nov. 29, 1854, 10 00	97
Gilpin, Isral, date Oct. 18, 1850	1 00
Hadlock, George, date April 7, 1851, 37 52; on which is indorsed 25 89	11 63
Hanchet, L., date Aug. 10, 1850	12 32
Harris, Edward S., date July 5, 1853, 44 00; indorsed, date July 21; indorsed, date Nov. 21, 1855, 20, 41 00	3 00
Hester, Dana, date March 27, 1851	2 08
Henthorn, Nelson G., Oct. 15, 1853, 12 00; indorsed, date Oct. 25, 1853, 1 00	11 00
Harrison, G. W.	
Hattan, Wm. T., date March 30, 1857	7 52
Hadlock, George, date Dec. 20, 1851	39 73
Hout, John Martyn, date Nov. 28, 1857, 42 69; indorsed, date Dec. 20, 1857, 20 00	22 69
Hester, David, date Jan. 23, 1852	8 00
Haskin, Nicholas, date Nov. 17, 1851	6 19
Hester, David, date March 25, 1853	7 48
Hattan, Mark, date March 17, 1853	1 90
Ireland, Pleasant, date April 15, 1857	5 00
James, Davis, date March 16, 1850	11 38
Kellogg, Ira, date July 2, 1849	3 32
79 Laws, James, date Nov. 14, 1857, 8 71; indorsed, date Nov. 20, 1857, 3 50	5 21
Leson, Wm. T., date March 24, 1847	2 00

Lucus, Loring, date Feb. 27, 1854, (taxes)	24	60
Morgan, Wm. S., date May 16, 1855	113	45
Morgan, Wm. S., date Jan. 24, 1855, 233 89; indorsed, date Aug. 13, 1855, 100 00	133	89
Morgan, Wm. S., date June 15, 1856	10	00
McKinny, Alvah S., McKinny, Erastus R., joint note, date April 22, 1857	75	00
McCerrel, Michael, note, date Oct. 5, 1857	3	25
Miller, Daniel, note, date Jan. 16, 1852	14	75
McIntee, John, note, date Dec. 1, 1857	6	36
Myers, Jacob, note, date Dec. 16, 1852	2	00
Miller, Henry	13	35
Nicholas, Thomas C., note, date March 17, 1852	99	17
Nicholas, Thos. C., Nicholas, James, joint note, date April 17, 1851	86	72
Orveno, T.		
Parker, Charles, accepted, note, date June 13, 1857	11	00
Philps, Ezekil, note, date Aug. 13, 1855	2	18
Riginald, Joseph, note, date Dec. 24, 1852	86	88
Reginald, Joseph, note, date Dec. 24, 1852	86	88
Richinson, Ch's M., note, date Dec. 8, 1848	12	41
Rickey, S. B., note, date March 6, 1852	2	07
Ray, John, note, date Nov. 21, 1857	53	14
Sayer, John, note, date Aug. 23, 1851	18	17
Sayer, John, note, date Jan. 1, 1853	29	35
80 Shinn, Abner, note, date Feb. 24, 1857	17	38
Summer, A. W., note, date Nov. 25, 1857	3	50
Smith, J. W., note, date Dec. 5, 1857	4	38
Vanmeter, A., note, date May 21, 1857	3	00

List of acc'ts from Ledger G.

Acres, J. W., 530	18	37
Antrim, Amos, 382	11	80
Antrim, James, 73	53	46
Antrim, Robert, 134	23	38
Austin, Jackson, 492	15	77
Armstrong, George A., 513	49	21
Atwood, William, 66	47	58
Bangs, Sam'l L., 536	3	00
Baird, Sam'l M., 537	8	93
Brouddus, Lunsford, 539	8	44
Barns, James, 618	10	00
Belchley, Joseph, 524	32	75
Barnhouse, Daniel, 525	11	21
Bryan, Thomas, 619		27
Brewer, John, 619		75
Burns, Daniel, 620	1	63
Belchley, Christian, 505	22	06
Beals, Cynthia A., 508	12	01
Bell, E. S., 409	12	91
Beckworth, B. P., 413	9	05
Balmer, I. J., 462	7	50
81 Barns, Geo. O., 475	10	79
Blackman, L. V., 475	22	00
Bird, Wash'n F., 478	23	07

	Beck, C. A., 479	28 78
	Baird, John, 496	7 66
	Boys, John, 497	3 30
	Boys, William, 72	57 83
	Belchley, Mrs. Cathrin, 84	68 56
	Boal, Robert M. D., 85	61 00
	Banman, Michael, 114	40 70
	Butler, Joel, 118	8 49
	Baker, George, 303	1 00
	Bassett, Luther, 307	7 00
	Bullman, Lot, 313	1 50
	Bouhan, Clayton M., 321	10 91
	Banman, Peter, 322	22 18
	Bangs, Mark, 14	30 45
	Brenamen, J., 24	
	Balts, Dominque, 28	58 02
	Barns, Mrs. Melan, 30	17 05
	Buckingham, Wm., 61	152 91
	Bell, John E., 71	45 88
	Blodgett, Jos. M., 394	26 00
	Barn, Tyler, 405	1 28
	Bumsey, Miss Eliza, 324	17 35
	Bumsey, Nathan, 399	17 35
	Bell, John, 400	1 28
	Blodgett, Daniel E., 332	60 51
82	Bullyce, Denix, 337	12 53
	Barns, H. B., 340	6 51
	Britt, O. H., 345	16 60
	Bishop, Dana H., 346	87 91
	Bell, Col. R. F., 349	2 25
	Balbrick, Jacob, 357	35 45
	Baldwin, B. T., 360	3 15
	Barns, H. T., 363	26 06
	Bird, Rob't, 376	146 49
	Bam, Jesse B., 380	35 48
	Brown, John, 381	5 53
	Bullman, Josh'a D., 384	3 61
	Bayne, James G., 388	26 71
	Conner, James T., 323	17 59
	Campbell, Caleb B., 524	11 40
	Caton, James, 525	13 55
	Cummings, Harvey, 520	6 47
	Castill, A. J., 534	14 50
	Church, Presbyterian, 535	1 55
	Chapter, Lacon, 538	50
	Cram, Henry S., 618	80
	Cumings, S. P., 619	50
	Chapman, J. R., 619	20 00
	Chuger, Nicholas, 620	61
	Collier & Embleton, 309	6 14
	Claudine, Eugene, 396	31 93
	Calder, Joseph, 402	8 75
	Calder, Mrs. A. C., 402	28 54
83	Canarro, (Conrow) Charles, 327	12 53
	Chenoweth, Ric'h, 338	41 27
	Cona, Geo. W., 344	61 53

Cutler, Jonas, 308	15	33
Calder, Isac B., 373	7	50
Cummings, Theodore, 307	1	50
Cook, W. E., 319	40	26
Christopher, James H., 19	26	00
Christopher, Wm. B., 33	109	80
Coffey, Malchy, 132	99	30
Cook, Geo. W. E., 142	39	83
Cushing & Jenkings, 503	16	44
Casson, Isac W., 513	7	00
Champlin, Mahlon, 418	64	47
Christopher, Rich'd N., 495	70	16
Dans, James B., 535	4	00
Dans, George N. D., 418	7	95
Dean, Mrs. Julia, 474	29	97
Davison, James, 495	1	00
Derio, Wm. M., 502	14	00
Dodds, Robert, 503	1	50
Davidson, Sam'l M., 21	22	60
Dodd, J. L., 47	27	22
De Lamar, Daniel, 165		55
Dillingham, John, 70	1	00
Dejois, James, 300	1	00
Dobbs, D. & Co., 404	53	23
Doran, Thomas, 404	15	24
84 Dexin, Mrs. Nancy, 324	11	95
Duchene, John, 330	2	90
Dunham, Ebenezer, 352	10	72
Dawson, Francis, 354	4	54
Dunkana, Edam B., 364	17	24
Dina, Abel F., 309	15	22
Delany, 401	3	04
Emler, Jacob, 336	12	65
Etter, S. M., 387	2	45
Edward, Ch's S., 388		85
Evans, Edmund, 319	76	88
Edwards, Wm. D., 143	6	00
Enty, John, 490	9	05
Erskine, D. S., 507	4	25
Fairbanks, Miss Mary, 619	6	50
Frickey, Henry, 521	14	45
Freeman, Elijahn, 525	23	40
Fisher, Elishu, 527	9	00
Foster, Wm. J., 529		60
Fitzgibbon, John, 529	2	00
Fisher, Stevens & Co., 531	8	25
Farr, Thomas, 619	6	55
Frank, Isac, 620		37
Feasell, William, 619	6	67
Frost, John, 516	9	15
Flemming, Sam'l L., 170	44	09
Freeman, Eligah J., 177	207	16
Fuller, Wildman, 181	213	31
85 Fay, Philips, 302	2	13
Feazel, Milton, 310	18	90
Forbs, Peter, 313	4	20

Foster, Wm. S., 318	19	82
Frost, J. H., 39	57	83
Ford, Albert, 60	47	86
Fosdick, Levi, 403	2	00
Freeman, Sam'l, 404	15	34
Fowler, Daniel, 355	29	09
Fost, Washington D., 359	15	53
Foster, Jacob S., 378	39	25
Gardy, M. A. J., 618		60
Gell, Thomas, 618	1	00
Gongleff, John B., 517	5	40
Glemes, Sam'l L., 411	121	16
Gibbons, A. M., 470	17	30
Grey, Wm. H., 499	11	29
Garrett, Levi, 347		75
Gnebert, Lewis, jr., 392		60
Graham, Adam, 397	22	28
Grey, E. R., 405	7	00
Grey, Mrs. Mary, 329	11	80
Gregory, Hall S., 343	72	10
Green, Abram, 27	25	11
Godfrey, George, 304	5	25
Griffith, Chs. W., 308	50	26
Gwibert, Lewis A., 314	1	73
Gardner, A., (sherif,) 512	10	75
86 Gell, Rich'd, 317	6	87
Graves, John R., 92	65	80
Garrigno, Mrs. M. W., 150	54	22
Guinn, Dana, 173	60	19
Green, Wm. B., 186	436	14
Hull, Milton, 532	2	50
Haskell, Benj., 539	12	61
Hadlock, Sam'l, 618	3	36
Hadley, Wm., 618	3	30
Hatton, Wm. F., 526	5	83
Havens, Wm., 527	11	03
Haws, E. F., 528	22	28
Hastings & Chapman, 531	6	24
Hains, Samuel, 133	62	48
Halferty, Rob't K., 136	63	53
Hudson, C. S., 302	4	25
Hewith, Benj., 306	23	98
Houstin, Jack, 308	2	75
Henthorn Nelson G., 311		95
Henthorn, Benj'n A., 320	21	80
Hressman, Jack, 322	35	38
Henthorn, Samuel P., 505	10	00
Head, John, 315	2	75
Howck, J. C., 408	57	67
Halstead, John, 409	17	89
Hunter, Jason L., 412	1	25
Hause, Obediah, 419	36	23
Hull, Isac, 419	53	17
87 Holleday, G. H., 464	7	49
Hull, Josiah, 480	2	78
Hilton, T. B., (M. D. Henry,) 481	2	50

	Hall, Chalkley, 492	1 59
	Hanmett, Mrs. James, 498	18 47
	Hulton, Mrs. C. A., 397	4 00
	Hill, Byron A., 415	17 11
	Holt, Thomas, 333	15 92
	Harvey, John, 335	82 70
	Hunter, William, 342	25 10
	Haines, Wm. F., 350	34 79
	Halstead, Henry J., 356	22 51
	Hadlock, Benj., 365	7 16
	Hadlock, Wellard, 366	14 39
	Hogan, Patrick, 375	3 25
	Hamilton, Sam'l, 381	10 09
	Heimuger, G., 383	12 83
	Ireland, Pleasant, 618	3 00
	Iliff, John, 314	2 00
	Jordon, Wm., 618	13 25
	Johnson, Joseph H., 526	19 45
	Jerry, William, 115	117 76
	Jacobson, Henry, 410	4 00
	Jacobson, John, 414	2 33
	Jervey, Thomas, 418	145 19
	Jones, Morgan, 468	1 75
	Justice, Robert, 328	16 57
	Jagnald, Martin, 331	23 67
88	Jones, Absolam, 334	3 38
	John, Lockwood, 335	44 80
	Kelley, John, (near Green's,) 394	39 25
	Kenedy, Henry, 398	8 25
	Kinkle, Jacob, 352	1 00
	Kingsley, George 510	13 14
	Kelley, Andrew, 467	2 25
	Kelley, Joseph, 502	90 62
	Kelley, Barney, 323	20 12
	Kesby, Sam'l L., 121	90 79
	Kelsey, John, 301	7 18
	Livingston, Thomas, (J. Ray,) 520	15 00
	Lynch, Patrick, 620	11 17
	Lattonerctte, James D., 80	29 75
	Lyon, John M., 305	3 04
	Long, Mrs. Charlotte, 312	5 67
	Lukecart, William, 141	7 48
	Lacon, Lodge, 470	20
	Love, Rich'd, 483	11 55
	Lockwood, Ralph, 486	76 57
	Leonard, Mrs. R., 489	4 00
	Loveland, Horace, 417	15 73
	Muller, Samuel, 537	14 00
	McKeon, Andrew, 618	70
	McEwen, Rob't, 519	11 23
	McCormick, Dan'l, 519	6 05
	Madley, Chas., 521	26 89
	McKeon, Merrit, 523	5 81
89	Monsier, George, 524	57 37
	Mundle, James O., 527	8 11

	Muller, Wm., 620	50
	Marhan, Mrs., 620	1 75
	McDonald, Catherson, 620	3 15
	McClanahan, Elizabeth, 389	4 82
	Meyers, Joshua, 393	6 25
	Meyers, John, jr., 395	1 40
	Moore, O. E., 345	9 94
	Morehead, Mrs. Matilda, 350	17 22
	Masters, Isac, 359	9 79
	Mundle, Abner, 366	68 75
	Martyn, James B., 380	1 60
	Mundle, Sam'l, 383	16 54
	Mahan, J. S., 385	3 50
	Mundle, Mrs. Ester, 512	25
	McKinney, A. S., 517	55 17
	Miller, James, 465	6 81
	Martin, Connar, 477	2 50
	Martin, George H., 479	19 08
	Martyn, James, 496	6 50
	Miller, Henry, (lawyer,) 496	1 80
	Morris, Pleasant, 500	10 55
	Maxwell, James H., 305	20 47
	Mahara, Martin, 306	23 35
	McAdams, George, 309	29 57
	Martin, Josiah W., 310	6 63
	Miller, Rob't, 20	59 25
90	Malone, Joseph H., 38	44 56
	McCuskey, William, 62	2 55
	McKeon, James, 68	144 14
	Miller, Scott, 88	54 78
	Myers, A. S., 90	165 96
	Malora, Hartley, 110	133 74
	McMurtry, Courtland, 144	74 44
	Malone, Joseth, 2d, 170	210 91
	McWhiney, James, 172	106 48
	McIntire, Mary and Cathran, 491	2 25
	McCurre, Hugh, 407	10 25
	McCullock, Joseph, 377	51 41
	McTaylor, Joseph, 316	2 25
	McFarland, Wm., 507	85
	Norton, John, 56	64 26
	Norris, Ira, Rev., 505	10 30
	Noble, Elisha, 413	6 80
	Nagle, John, 463	1 25
	Nervin, Thos., 475	1 75
	Newel, Ira, 483	5 15
	Oliver, Francis, 520	4 89
	Oblingel & Blodgett, 57	3 49
	Owens, Wm. K., 406	27 19
	Owens, Thos. E., 506	35 78
	Owens, David, 375	35 90
	Oniger, August, 416	2 45
	Organ, Peter, 476	5 25
	Orr, James, 477	18 01
91	Owens, F. G., 494	5 00
	Orr, James W., 502	89 74

Owens, Fendly, 54	42	28
Ogle, Sam'l P., 87	39	79
Oblinger, G. D., 163	39	02
Overmyer, Wm., 362	75	49
Pursell, Edward, 535	21	00
Pursell, Peter, 531	1	25
Powers, James M., 619	3	25
Porch, Mrs. W., 504	2	37
Parker, Charles, jr., 512	24	75
Perry, Peirce, jr., 412	25	36
Placker, Henry C., 181	23	10
Pearsons, Geo. M., 18	8	31
Peckerell, Jesse, 29	8	13
Peper, James, 86	30	65
Perry, De Cornelius, 122	105	82
Powes, James, 138,	99	36
Piper, John, 153	91	06
Perry, Theodore, 165,	520	44
Perry & Dodds, 166	656	14
Patten, Mary A., 338	3	57
Parkes, W. G., 361	47	41
Pringle, Wm., 370	1	50
Pringle, Robert, 379	47	66
Quinn, Thomas, 618	1	20
Quincy, Edward, 489	1	25
Rasten, Philip, 534	14	00
92 Robbins, Mrs., (cutler,) 618		45
Rickey, Peter S., 518	46	61
Ross, John N., 620		40
Richard, Richard H., 343	101	29
Rogers, Sam'l, 348	68	81
Rising, Peter A., 358	12	06
Ricketts, Garret, 373	7	63
Ray, John, 379	2	85
Ramsey, Silas, 13	42	46
Rogers, John, 315	9	57
Reeder, De J. H., 221	63	36
Ramsey, Albert, 81		20
Robbins, E. V., 97	2	18
Rickey, Sam'l, 135	92	11
Roach, S. E., 303		50
Rising, Adam Peter, 510	5	88
Roden, Patrick, 516	1	05
Ray, Jesse, 416	22	00
Roberts, John, 462	5	00
Rowe, Isac V., 477	3	30
Rickey, Wm., 480	37	39
Ruggles, K. H., 432	31	23
Reeves, Wm. W., 495	11	40
Seaman, John W., 517	3	05
Simmons, George, 519	6	15
Smith, Andrew, (Scotch,) 522	6	25
Shuggart, Edone, 533	10	50
Sweeney, M. A., 618		80
93 Singleton, Willis R., 509	10	69
Simpson, Wm., 618	4	00

Savage, Joseph M., 511	61	61
Seifert, John, 513		72
Shanklin, James, 415	23	06
Sharp, James, 417	1	75
Seaman, Daniel, 462		90
Smith, Franklin, 464	1	22
Smith, John A., 470	4	99
Sithe, James, 474	9	50
Smith, Elisha R., 485	10	40
Stewart, John E., 490	20	66
Slowey, Bernard, 498	15	00
Slowey, Thos., 499	6	53
Stratton, James, 64	52	15
Sloniger, Oliver, 70	40	33
Stephenson, John, 75	4	75
Shinn, Abner, 145	131	29
Sawyer, Enoch, 175	57	06
Stephens, Edw'd, 395	26	59
Slater, Jacob, 398	21	05
Sonards, Solomon, 399	37	22
Smith, Wm., 403	5	65
Savage, Jos., jr., 406	1	59
Straton, Mathew, 327	51	90
Smith, Geo. A., 341	88	03
Sprangler, Wm., 353	8	48
Stratton, Wm., 373	81	81
94 Snartz, Henry, 277	9	21
Snartz, E. H., 386	11	27
Thompson, S. G., M. D., 522	6	89
Tanquary, James, 528	12	65
Thomas, S. A., (dentist,) 536	3	25
Tulley, Cathrine, 620	2	00
Townsand, Wm. S., 396	6	63
Tanquary, Abram, 404	45	98
Teakle, George, 342	54	18
Thomas, Dorastus, (M. D.,) 351	58	53
Tool, Conrad H., 361	14	25
Thompson, Chas. F., 368	100	52
Tool, John B., 59	88	52
Thompson, Mrs. James, 124	12	09
Thomas, Isac, 417	3	70
Ullman, Henry, 303		09
Valkbosh, Peter, 309	3	05
Verrey, James, 93	61	88
Vincere, Rich'd, 508	26	37
Vanecose, Samuel, 371	38	43
Webber, A. P., 400	14	62
Webber, Wm. H., 325		77
White, John, (Gruns,) 353	17	55
Wilkins, F. P., 354	3	51
Wilton, Thos., 382	11	80
Wikoff, J. S., 385	12	91
Weed, N. C., 386	44	68
Watkins, David, 506	1	75
95 Winters, James, 514	1	20
Wilcox, Miss E., 515	41	01

Welch, D. O., 465	2 75
Waterman, John O., 467	4 25
West, Leint, 468	11 69
Way, Amos F., 469	65
Warren, Z. C., 461	33 43
White, Daniel, 484	9 07
Wilcox, E. A., Dr., 494	4 94
White, Amos, 497	3 60
Wilkinson, J. H., 499	1 63
Wright & Will, 500	3 55
Wilcox, Mrs. Levi, 501	9 92
White, John, (F——,) 316	19 80
Wineteer, John, 74	414 67
Winters, Reese, 91	83 77
White, James, 111	110 89
Wightman, Geo. F., 123	199 53
Wikoff, E., 620	95
Wilson, Joseph C., 619	22 00
Ward, J. E., 534	1 95
Walkes, W. S., 146	61 88
Whipple, E. A., 147	18 15
White, Edw'd, 164	102 51
Wikoff, John, 518	2 00
Winters, Wm., 536	1 00
White, Wash'n, 618	1 42
Yonger, Benjamin, 178	44 88

WM. FENN.

96 *List of acct's from Ledger F.*

Francis Sweet	8 00
Mark Bangs	121 38
Patrick Linch	16 11
Lewis Watson (near Henry)	49 22
Sam'l L. Flemming	32 23
L. Joshland	19 11
Rubin W. Davidson	3 50
Mikel Banman	22 85
Jeremiah Crook	6 50
Henry Garrett	1 50
Milton Knox (in me)	96 70
Frank & Sherwood	20 81
V. Mitchell	4 75
Sam'l Hannah	11 25
Miss Mariah Henthion	4 00
James Brewer	7 03
Ezekel Hawkins	3 01
Lockwood, John	4 62
Alexander Shaw	1 75
Geo. W. Harper	1 11
John M. Patten	2 52
Sam'l B. Buckley	19 03
Miss A. Iliff	29 47
Jessee W. Hickwell	4 39
John P. Clemons	29 32
James Hammett	3 50

97	Michel McCune	1 65
	Wm. Hatter	7 52
	N. G. Henthren	1 80
	Mrs. C. A. Beals	7 46
	Chancey F. Gaylord	5 17
	U. P. Goladay	3 00
	Wm. C. Boyles	6 00
	Sam'l R. Curtis, (Col. S. K, at Keocuck)	11 39
	Alfred Bane	2 10
	Benj. Hewitt	1 91
	Patrick Tulley	5 50
	John S. Tanquary	9 15
	H. B. Fowler	7 15
	Jesse F. Huff, (Lawa Ridge)	6 55
	Robt. Dodds	25 71
	Nathan Thompson	23 40
	John Gleason	2 25
	Alexander McCay	3 25
	Jacob Henson, (on Baley farm)	8 36
	John Winter	50 00
	Darm't Ireland	1 38
	John Inny	1 84
	Horace Teazle	7 51
	Levi Molton	1 32
	Peter Owens	6 75
	Walter F. Owens	2 75
	Robert H. Geha, (at depot,)	3 30
	Theodore Kocham	1 00
98	Lewis J. Clark	1 75
	John Hatter	50
	Jacob Concle	1 13
	Miss Mary Smith	3 43
	Wm. Thompson	2 09
	J. W. Mony & Co., (see Funk,)	22 12
	Nathaniel Emerick	3 82
	Stephen Crothers	1 20
	Sam'l Malone	85
	Jessey Jackman	8 35
	Owen Powel	5 00
	J. Bonne	10 00
	John Leason	38
	Wm. Deaver	40
	S. A. Sweet	1 25
	Abeck McCoan	1 10
	John W. Babbit	1 41
	John P. Miller	19 00
	James Slowey	1 76
	Jerome Tessel	3 50
	Mrs. Mary Kenedy	8 22
	A. S. McKinney, ($1 21)	5 32
	Mrs. A. S. McKinney	4 11
	J. W. Northrop	7 75
	Joseph Scott	1 46
	J. W. Orr	2 13
	Isac Monny	2 11
	John Donaldson, (A. S. K. at Will)	200 00

99	Geo. B. Conn	1 40
	Erastus Walters	50
	Washing Gehr	85
	Mrs. Cathers Grey	1 71
	Wm. H. St. Clair	4 00
	Rev. E. S. Freeman	27 39
	Thos. Roach	4 75
	Joseph Hughes	5 33
	Wm. Simpkins	1 00
	Thos. Clay	7 75
	A. Edwards	1 15
	Isas Sergart	3 79
	E. W. Allen	14 70
	O. C. Walker	4 50
	Wm. Fuller, (see at will,)	231 00

From Ledger D.

	Ambros Slip, (in Iowa,)	3 48
	James Slip, (in Iowa,)	5 83
	Allen Slip, (in Iowa,)	30 25
	Barney Gelsh	1 75
	O. H. Stout	6 97
	Lad & Grey, (Pon)	10 00
	John F. Targuary	3 50
	John Jarns, (Stark Co.)	10 40
	Westley Buckle	8 26
	John North	7 75
100	John Gwin, (Stark Co.,)	1 58
	Jacob McChern	23 46

Accounts from Ledger D.

	Mordica Barne	5 43
	Leonard Stringer	7 28
	Willard Griswold, (Iowa,)	9 23
	John S. Hunt, (clan. in cost,)	13 98
	William P. McMudle, (se S. Herth,)	7 45
	Miss Foster	6 15
	A. D. Guyham, (Iowa,)	21 49
	Rev. E. S. Freeman	9 36
	Ira Cogswell, (Ottawa,)	25 02
	George Hadlock	39 73
	George Malone, (1st a judg't,)	24 76
	Mrs. Sarah McCoy, (Woodford,)	50 00
	Dr. Robert Hall, (Foulon)	3 86
	John Rickey, (Calafor.)	23 83
	Lorenza Allen	23 99
	Dr. Bradley	3 15

Ledger E.

	George Freberger, (Woodford Co.)	7 00
	Also two claims filed in county court of Marshall County, to wit:	
	1 against the estate of George Dean	191 08
	1 against the estate of John R. Crane	18 22
	One note against W. B. Green, of fifteen thousand dollars,	
101	dated Dec. 15th, 1847, due in nine months after date and payable in William Fenn's paper, at par	15, 000 00

List of bonds and stocks.

Three city bonds of the city of Lacon, of one thousand dollars each.

Forty shares of stock in the Western Air-Line Railroad Co., of one hundred dollars each.

An undivided one-half interest in the profits of the business of the firm of C. H. Ganbert & Co., said firm being composed of C. H. Ganbert and Wm. Fenn, and the business was the wholesale and retail of jewelry and watches; said copartnership commenced about the 1st of May, 1836, and continued one year.

The bal. of acc't due Fenn, Perry & Todd at the Middle Mill being due me, as per agreement with Perry & Dodd.

Schedule B, referred to in foregoing assignment. Debts owing by said William Fenn.

Class number one.

Fenn, Perry & Dodd's acceptance of J. L. Dodds, date March 19, 1857, due to the Charter Oak Bank of Hartford, Connecticut	$1,500	00
102 A judgment in the circuit court of Marshall Co. against Fenn, Perry & Dodd by Joseph M. Dodd, of about	125	00
Abram S. Fishburn, notes and accounts held against said Fenn by said Fishburn, of about	1,300	00
John Southworth, of Dryden, in the State of New York, two notes given to said Southworth by Fenn, Perry & Dodds	3,000	00
Rev. Augustus Pomeroy, of Gestin, in the State of New York, 5 notes given by said Wm. Fenn to said Pomeroy as follows: 1 note for $1,041 09; 1 note for $400; 1 note for $400; 1 note for $250—about	2,091	09
Mrs. Nancy Brown, due her for money loaned, about	645	00
Mrs. Lucy Gibson, ditto	120	56
Messrs. Robbins & Holland, due them on note	1,000	00
Estate of John R. Moore, due estate on said note	2,000	00
Treasurer of Lacon Township, two notes for school money borrowed by Fenn—1 note, $65; 1 note, $340	405	00
James Hall, due him on note made by Wm. Fenn and others, about	2,000	00

103 *Class number two in said Schedule B.*

Notes made by said Wm. Fenn to persons in New York City:

1 note to Jennings, Rud & Co, dated March 18, 1857	150	55
1 note to Jennings, Rud & Co., April 11, 1857	689	94
1 note to ditto, Aug. 26, 1857	1,117	33
1 note to Myers, Kingsley & Co., April 11, 1857	902	27
1 note to ditto, Jan. 9, 1857	177	84
1 note to Cornells & Wills, April 10, 1857	771	65
1 note to ditto, Aug. 29, 1857	363	40
1 note to Ross, Newel & Co., April 13, 1857	845	58
1 note to ditto, Aug. 28, 1857	1,227	74
1 note to Bridgman & Johnson, April 13, 1857	81	46
1 note to Newel, Harrison & McDonal, April 14, 1857	262	32
1 note to ditto, Aug. 29, 1857	1,240	07
1 note to Dibble, Mark & Moore, April 15, 1857	1,024	18
1 note to ditto, Sept. 2, 1857	2,873	14

1 note to Clapp, Kent & Beckly, April 16, 1857		343 32
1 note to ditto, Jan. 18, 1857		362 97
1 note to ditto, Sept. 2, 1857		531 40
1 note to Bowen, McName & Co., April 15, 1857		1,494 49
1 note to Archibald Young & Van Vlerck, April 16, 1857		1,548 23
1 note to George Colt, June 25, 1857		250 00
1 note to T. H. & J. C. Conkle, July 18, 1857		89 27
1 note to Girdu, Fellows & McMella, Aug. 25, 1857		890 34
1 note to ditto, Aug. 26, 1857		513 89
1 note to Cummins, Seaman & Co., *et al.*, Sep. 1, 1857		542 57
104 1 note to Cushing, Key & De Graw & Co., date Aug. 27, 1857		408 00
1 note to C. E. and M. J. Babcock, Aug. 27, 1857		473 71
1 note to Hastings & Plympton & Co., Sept. 1, 1857		211 58
1 note to E. Colwell & Sons, Aug. 26, 1857		230 35
Debts in acc'ts with persons in New York City:		
An account with Bridgeman and Johnson		13 50
An account with Cummings, Seaman & Co		25 00
An account with Bowen, McName and Co., said to be about		1,504 38
An account with ditto, about		20 00
Notes due persons in the city of Boston:		
1 note to D. B. Steadman & Co., date June 8, 1857, 12 mo		135 64
1 note to Potter, Hitchcock & Co., date June 26, 1857, 12 mo		267 62
Notes due persons in the city of Philadelphia:		
1 note to Wood, Bacon & Co., date April 8, 1857, 6 mo		746 48
1 note to Addicks, Van Dusen & South, April 8, 1857		1,233 10
An account with ditto, April 8, 1857		16 30
Notes due persons in the city of Pittsburg:		
1 note to Wm. McCuller & Co., date April 15, 1857	167 58	
Paid on said note	70 00	
Leaving a balance due on sum of		97 58
1 note to Wm. McCully & Co., date July 8, 1857		66 75
1 note to Spring & Co., date April 13, 1857		149 50
1 note to ditto, July 8, 1857		282 00
Notes due to persons in the city of Chicago:		
1 note to Benedict, Mallory & Farna, date June 5, 1857		185 83
1 note to Hamon, Akin & Gale, date July 3, 1857		174 00
105 1 note, ditto, May 22, 1857		46 60
1 note to Fish & Ripley, date May 10, 1857		48 92
1 note to Wadsworth & Wells, date Nov. 5, 1857		431 45
1 note to Cooley, Farwell & Co., date Oct. 20, 1857		96 88
Notes due to persons in the city of St. Louis:		
1 note to Gillman & Collier, about		100 00
Notes of various kinds due from said Fenn to divers persons, either by himself, alone, or jointly with others, as follows:		
Note to Elijah Freeman, about		400 00
Note to Sam'l Freeman, about		2,000 00

Note to D. B. Culver, about			250 00
Account to Cyrus Falkner, account about			150 00
Account to James Myers, note about			150 00
Account to John M. Iliff, about			81 50
Account to Bisk, about			57 70
Accepted to Hawthorne, accepted, about			175 00
Note to Green & Lockwood, notes in the hands			600 00
Note to Henry Bullier, notes about			100 00
Note to Wm. Feazle, notes about			150 00
Note to John Headnet, notes about			150 00
Note to L. Broaddus, notes in his hands			650 00
Note to Lewis Winetier, notes about			100 00
Note to Wm. Jerry, notes about			100 00
Note to A. S. Sherwood, notes about			40 00
Note to C. T. Thompson, notes in hands of			100 00
Note to Isac Hull, notes			200 00
	Note to John Lawton, 3 notes about		325 00
106	Note to George Wightman, about		400 00
	Note to John Winetier, about		534 00
Note to Wm. H. Johnson, about			530 00
Note to James McKeon, about			200 00
Note to Timothy Owen, about			65 00
Note to Scott Miller, about			150 00
Note to J. McCulluck, about			117 79
Note to Isac Hancock, about			30 00
Note to Henry Foster, about			233 99
Note to J. B. Tools, about			150 00
Note to Wm. Davis, about			1,084 59
Note to Thomas Clark, about			80 00
Note to J. D. Bullman, about			26 00
Note to Joseph Belchey, about			1,000 00
Note to Walker & Kellogg, about			1,700 00
Note to Coper, about			80 00
Note to Rev. Augustus Pomeroy, about			4,000 00
Note to Robert Antran, about			290 00
Note to Wm. Buckingham, (several notes) about			1,863 20
Note to Rice, about			200 00
A. S. Myers's note, about			80 00
Note to James White, about			100 00
Note to James H. Williamson, about			500 00
Subscription to Methodist Church, Lacon, about			100 00
Note to Benjamin Joyer, about			65 00
Note to Samuel Rogers, about			40 00
	Note to John Piper, notes in his hands, being		
107	balance of note to Sam'l Gibbs	152 78	
	Balance of note to Holland & Piper	191 27	
			344 05
3 notes in the hands of Theodore Perry: 1 note for $100; 1 note for $127; 1 note for $75			302 00
Robert S. Jayer, 1 note			1,300 00
John Winetier, 1 note			122 70
Central Bank, Peoria, Illinois, about			6,000 00
Which is secured in part by stock in the Peoria Marine and Fire Insurance Co., worth about $1,800.			
William E. Buckingham, note			383 63
Robert Antrim			136 00

Class number three in said Schedule B.

Hiram Atwood, note of..... 150 00
And also to include all of the debts claim at demands against said firm not specially enumerated and set out in either of the classes one, two, three, "four," in this said Schedule B.

Class number four in said Schedule B.

A trust deed given to secure the payment of fifteen thousand dollars due to the Bank of New Castle; also an obligation to Thos. Kitir of eleven
108 thousand two hundred dollars, together with all notes and papers for renewal of and interest on the same, all of which has been assumed by Wm. B. Green.

A note or obligation of about seven thousand five hundred dollars due to Chappell & Valle, of St. Louis, three thousand and int. of which has been assumed by said Wm. B. Green, and four thousand and five hundred is secured by a trust deed on said Wm. Fenn's residence in Lacon, said residence being included in Schedule A under the list of real estate.

Three notes, of eight hundred dollars each, given by said Fenn and Silas Ramsey for two quarter sections of land to J. S. Foucher, of New York City, the title of said land being now in dispute. Should said title prove to be good, Evins V. Robbins and Leonard Holland have obligated themselves to pay said notes with the avails of certain bonds held by them as collateral security from said Fenn. If said title should prove good, it is supposed that the imperfection in said title will be an offset against said notes.

A note due to Clark, Renfew & Co., of St. Louis, of about three thousand and four hundred dollars, and a note due to E. H. Aiken of about three
109 hundred dollars, both of which have been assumed by Perry & Dodds.

WM. FENN.

STATE OF ILLINOIS, *Marshall County, ss:*

I, James Wescott, clerk of the circuit court of said county and ex officio recorder, do hereby certify that the instrument of writing hereto attached, and which purports to have been executed by Wm. Fenn and wife to E. V. Robbins, was filed in said office for record on the eighth day of January, A. D. 1858, at 7 o'clock p. m., and that the same was this day duly recorded in Book X, at pages 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16.

In testimony whereof, I have hereto set my name and affixed the seal of said court at Lacon, in said county, on this 10th day of March, A. D. 1858.

[SEAL.] JAMES WESCOTT, *Clerk*,
By L. B. DUTTON, *Deputy.*

Endorsed: Filed December 28th, 1858.

WM. H. BRADLEY, *Clk.*

110 On the same day, to wit, the twenty-eighth day of December, A. D. 1858, came said defendant Thompson, by his solicitors, Hoyne, Miller & Lewis, and filed in said clerk's office his answer in said entitled cause, which said answer is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Northern District of Illinois*, ss:

Circuit court of the United States for the seventh circuit and northern district of Illinois, in chancery.

JAMES MYERS, WILLIAM KINSLEY, AND CHARLES STOUT
vs.
WILLIAM FENN, ENOS V. ROBBINS, SAMUEL THOMPSON, and William B. Green.
} Creditors' bill.

The several answer of Samuel Thompson, one of the defendants, to the bill of complaint of James Myers, William Kinsley, and Charles Stout, complainants, against this defendant and William Fenn, Enos V. Robbins, and William B. Green, defendants.

This defendant, Samuel Thompson, now and at all times saving and
111 reserving to himself all and all manner of benefit of exception and advantage of exception to the errors and imperfections contained in the said bill of complaint of said complainant, for answer thereto, or to so much thereof as he is advised it is material for him to make answer unto, he, answering, says that he knows nothing except from the charges made in said complainants' bill about any judgment having been obtained against said Fenn at the term of May, A. D. 1858, in the circuit court of the United States for the seventh circuit and northern district of Illinois, for the sum of eleven hundred and fifty-two dollars and thirty-nine cents for the damages which they sustained and for costs and charges of complainants in and about the same, or about any writ of fieri facias having been issued on or about the 3d day of June, or at any other time upon said judgment, or that said writ was endorsed and directed to said marshal of said northern district, or that said execution was returned on the 30th day of May, as alleged in said bill of complaint.

But respondent supposes all of those allegations in said bill respecting said judgment and execution are true, and that there probably is now a the said judgment wholly unsatisfied in said *said* court, and that said judg-
112 ment of $1,152 39 was, at the date of filing said complainants' bill of complaint, due and wholly unpaid and unsatisfied by said defendant Fenn, or any one for him.

Respondent admits that said William Fenn, on or about the tenth day of December, A. D. 1857, and for some time before, was engaged in the mercantile business in the city of Lacon, in the county of Marshal and State of Illinois, in the district aforesaid; but your respondent is not informed and does not know whether or not, in the course said mercantile business divers persons became indebted to him, said Fenn, to a large amount, or whether or not, at the time of filing said bill of complaint, said Fenn had debts due him for which he holds divers securities and evidences.

Respondent supposes it to be true that during the said business of said Fenn that divers persons did become indebted to said Fenn to some extent, but to how great an extent, or in what amount, this respondent is not informed.

Nor does this respondent know whether or not the said Fenn now holds, or did at the time of filing said bill hold, any evidence of said indebtedness or any goods, chattels, wares, or merchandise, or any property or effects whatever which belong to him, or in which he is in any way or manner beneficially interested, or that he has equitable interests or things in action of any kind or nature.

Respondent, further answering, says that he is not informed and
113 does not know whether or not said Fenn is, or was at the time of filing said bill of complaint, in any way or manner beneficially interested in

any real estate or chattels real of any name or kind, or in any contract or agreement relating to real estate, or that said Fenn is, or was then, the owner of or in any way beneficially interested in the stock of any company, incorporated or unincorporated, or copartnership, or in the profits of any copartnership, or that he had in his possession at the said time of filing said bill of complaint, any money, in coin or in bank-bills, or that he had any money deposited in any bank or elsewhere to his credit, or that he had money, or securities for the payment of money, held by any other person, in trust or otherwise, for his benefit.

Respondent further says that he does not know what motives may have actuated said Fenn in making any sale or assignment that he may have heretofore made, but has no reason to believe that any such sale or assignments were made in bad faith or with any fraudulent intent.

Respondent knows nothing about complainants' motives in filing their said bill.

Respondent supposes there may be now, and that there was at the time of filing said bill of complaint, actually and equitably due to said
114 complainants upon said judgment the sum of eleven hundred and fifty-two dollars and thirty-nine cents, together with the interest thereon from the 24th day of May, A. D. 1858, over and above all claims and demands of said defendant William Fenn, by way of set-off or otherwise.

And this respondent, further answering, admits "that having been for a long time theretofore in the mercantile business in the city of Lacon, county of Marshall and State of Illinois, and being then the owner of a large stock of merchandise of the value of eighteen thousand dollars or thereabouts, on or about the tenth day of December, A. D. 1857, or very soon thereafter, said defendant William Fenn did make a sale and transfer of his whole stock of merchandise to said defendant Samuel Thompson, for the sum of eighteen thousand six hundred and thirty-nine dollars and ninety-six cents, according to the invoice of said stock, taken by said Thompson and said Fenn at the time of said sale; that for said stock of goods so sold, and in full and fair consideration for the same, said Samuel Thompson then and there paid said Fenn twenty one-thousand-dollar bonds, to wit, nine of Lacon City bonds, of one thousand dollars each, drawing ten per cent. interest per annum, and eleven of Marshall County bonds, of one thousand dollars each, drawing six per cent. interest per annum.

115 Respondent admits that at the time of said sale he knew that said Fenn was considerably in debt, but at that time supposed all indebtedness which was likely to be troublesome to said Fenn were joint indebtedness with one Theodore Perry and Joseph L. Dodds, who, about that time, failed in business.

Respondent denies that so far as he is concerned in and about said sale, that the said sale of said stock of merchandise was not made in good faith; on the contrary, this respondent expressly asserts and declares that he entered into said contract of sale; paid said bonds to said Fenn as aforesaid, and took possession and absolute and unqualified control of said stock of merchandise, under and by virtue of said sale in good faith, and wholly and exclusively for the use and benefit of this respondent, the said Samuel Thompson, and for the benefit of no other person whomsoever.

That he did not enter to said contract of sale by any collusion with said Fenn or any other person, or for any purpose of placing the property or effects of said Fenn beyond the reach of any execution that might be issued upon any judgment which might thereafter be obtained against said Fenn, or for the purpose of giving the control of said property to said William Fenn.

Your respondent, further answering, denies that he has now, or that he had at the time of filing said complainants' bill of complaint, or at any
116 time since, any notes, accounts, lands, property, or effects of any

name or kind, either real or personal, or chattels real in his possession, or under his control, which belong to said William Fenn, or in which he is in any way or manner beneficially interested; and respondent does not know whether or not said Fenn, Robbins, or Green have any of such property of said Fenn, or in their possession or control—not having any information upon that subject one way or other. In answer to complainants' interrogation as to "what was the amount, kind, value, quantity, and description of the stock of goods sold by said defendant Fenn to said defendant Thompson, as aforesaid? when was the said sale made? what are the terms and conditions thereof? what were the avails thereof? what has been done with them? and if paid out and disposed of and for what purpose?" this respondent says that said stock of goods consisted of a general assortment of dry-goods, groceries, hardware, queensware, hats, caps, boots and shoes, and ready-made clothing, and according to invoice as aforesaid was of the value of eighteen thousand six hundred thirty-nine dollars and ninety-six cents. Said sale was made on the 10th day of December, A. D. 1857. The terms and conditions of said sale were that said Thompson was to pay said Fenn, in full consideration for said goods, nine Lacon City bonds, of one
117 thousand dollars each, and eleven Marshal County bonds, of one thousand dollars each, as aforesaid, and said Fenn was to deliver up full and immediate possession of said goods to said Thompson, which considerations were then and there computed, with said Thompson paying and delivering up to said Fenn said bonds, and said Fenn giving immediate possession of said stock of merchandise. As to what said Fenn has done with said bonds, the avails of said sale, this respondent is not informed, and therefore unable to state.

Your respondent, by way of answering further, says he is informed and believes that on or about the 30th day of December, A. D. 1857, and but a short time after said sale to said Thompson, said Fenn being in debt, embarrassed, and in failing circumstances, did make an assignment of all his property and effects, both real and personal, to said defendant Enos V. Robbins for the benefit of his, said Fenn's, creditors.

Respondent has no knowledge whether said assignment included and conveyed all of said Fenn's property and effects or not, or what motive actuated either said Fenn or said Robbins in making or entering into said assignment. And knows nothing about said deed of assignment, as the same is not within the control of respondent.

118 Respondent further says that he is informed, and supposes it to be true, that on or about the 15th day of December, A. D. 1857, said Fenn sold to said defendant William B. Green his interest in a large tract of land, and gave said Green a quitclaim deed for same, and that said Green agreed with said Fenn, in consideration of said interest so sold—said Green agreed with said Fenn to buy up, and deliver cancelled to said Fenn, or his assignee, fifteen thousand dollars in said Fenn's outstanding notes and obligations.

This respondent knows nothing about the quantity, value, or description of said land, nor is he informed, or does he know what were the motives of said Fenn in making said sale of said lands, or of said Green in buying them. Respondent further says that he knows nothing about what has been done under said assignment by said Fenn to said Robbins, and that he has not now, nor did he have at the time of filing said bill, any money, notes, accounts, lands, property, effects of any name or kind, either real or personal, or chattels real, in his possession or under his control, which belongs to said defendant Fenn, or in which he is in any way or manner beneficially interested. As to the said defendants Fenn, Robbins, and Green, in this respect, respon-
119 dent knows nothing.

And this respondent denies all combination, confederacy, collusion,

bad faith, and fraudulent intent charged against him in said bill, without that, that any other matter or thing in said bill of complaint contained, and not here and hereby well and sufficiently answered unto, confessed and avoided, traversed or denied, is true to his knowledge or belief. All which matters and things this respondent is ready to aver, prove, and maintain as this honorable court shall direct, and prays hence to be dismissed with his costs and charges in this behalf most wrongfully sustained.

SAMUEL THOMPSON.

HOYNE, MILLER & LEWIS,
Sol's and of Counsel for Def't Thompson.

STATE OF ILLINOIS, *County of Marshall, ss:*

Samuel Thompson, the above-named respondent, and one of the said defendants, whose name is subscribed to the above answer, being first duly sworn, say that he is the respondent in the above answers; that the matters and things therein set forth are true in substance and in fact.

SAMUEL THOMPSON.

Subscribed and sworn to before me this 18th day of Sept., 1858.
[SEAL.] MARK BANGS, *Notary Public.*

120 Endorsed: Filed December 28th, 1858.

WM. H. BRADLEY, *Clk.*

On the same day, to wit, the twenty-eighth day of December, A. D. 1858, came said defendant William B. Green, by his solicitors, Messrs. Ramsey, Hoyne, Miller & Lewis, and filed in said clerk's office his answer in said entitled cause, which said answer is in the words and figures following to wit:

United States of America, circuit court of the United States for the seventh circuit and northern district of Illinois, in chancery sitting.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

JAMES MYERS, WILLIAM KENSLEY, AND CHARLES STOUT
vs.
WILLIAM FENN, ENOS V. ROBBINS, SAMUEL THOMPSON, William B. Green.

The separate answer of William B. Green, one of the above-named defendants.

The above-named defendant, William B. Green, saving and reserving to himself all manner of exceptions to the many errors and imperfections, mis-
statements and misrepresentations in the said complainants' bill, in
121 answer to so much thereof as he is advised it is necessary for this respondent to answer, answering, says that your respondent admits that he supposes that it is true that at the May term, 1858, of the circuit court of the United States for the seventh circuit and northern district of Illinois, the said complainants recovered a judgement against the said defendant William Fenn, as charged in said complainants' bill of complaint, and for the sum of eleven hundred and fifty-two dollars and thirty-nine cents damages, and the costs of suit; that he knows nothing about said judgement, except from hearsay, and as charged in said complainants' bill of complaint.

Your respondent further admits that he supposes it is true that said judgement was on the third day of June, A. D. 1858, in full force and was unpaid, and that the said complainants sued out of the clerk's office of said court a writ of fieri facias, directed to the United States marshal for the northern district of Illinois, and that by said writ the said marshal was commanded that of the goods and chattels, lands and tenements of said defendant Fenn, in

said nothern district, he make the said sum of $1,152 39-100, and that he should have the said money at the clerk's office of said court in ninety days from the date thereof, to satisfy said judgement, and that he have at the
122 same time and place said writ, and that before the delivery of said writ to said marshal, the same being duly endorsed and delivered to him, on or about the 3rd day of June, A. D. 1858. Your respondent has no knowledge of the above facts, except as charged in the said complainants' bill of complaint and from hearsay, but supposes they are true.

Your respondent denies and supposes it is untrue, as charged in said complainants' bill, that the said marshal of the said northern district of Illinois returned said writ on the thirtieth day of May, A. D. 1858.

Your respondent knows nothing about whether or not the said marshal made diligent inquiry of persons acquainted with Fenn for said Fenn before the 30th day of May, 1858, or whether he was informed that said Fenn had made an assignment or not, but your respondent supposes that charge in said complainants' bill is wholly untrue. Your respondent supposes it to be true, as charged in said complainants' bill of complaint, that the said marshal returned said writ endorsed unsatisfied, and that said judgment yet remains unsatisfied, and and unpaid to complainants. Your respondent supposes it may be true, as charged in said complainants' bill of com-
123 plaint, that there is due to the whole of said judgment, with the interest that has accrued upon the same over and above all claims of defendant Fenn, by way of set-off.

Your respondent, further answering, says that is true that on or about the 10th of December, A. D. 1857, the defendant William Fenn was engaged in merchandising in the city of Lacon, in Marshall County, Illinois, in the said northern district, as charged in said complainants' bill of complaint, and that at the said time divers persons were indebted to said Fenn, as he supposes. He does not know whether the amounts were large or small. Your respondent does not know whether or no at the time of filing said complainants' bill of complaint any person or persons were indebted to said def't Fenn. Don't know whether or no he at that time or now holds any securities or evidences of indebtedness, or whether or no he has any goods, wares, or merchandise, or other articles of personal property which belong to him, or in which he is interested, or whether or no the said Fenn has any equitable interests or things in action of any nature or kind which out to be applied to paying complainants' judgment against said Fenn. Your respondent, further answering, says that he does not know that Fenn was, at the time of the filing said complainant's bill the owner or beneficially in-
124 terested in any real estate or chattels real, or any contract or agreement relating to real estate, or the rents, issues, or profits of any real estate, or that he, the said Fenn, had any interest of any kind or nature in any stock of any company, either incorporated or unincorporated, or in any copartnership, or that he had in possession at the time of filing said bill any money, in coin or bank-bills, or that he had any money deposited in a bank or elsewhere to his credit, or that he has money or securities for the payment of money held by any person in trust or otherwise for his benefit.

Your respondent, further answering, says that he supposes and always supposed, and so charges the fact to be, that the assignment and transfer made by said Fenn of his property, effects, securities, and debts due him was made in good faith, and for the benefit of his creditors, as set forth in his deed of assignment, and not for the purpose of defrauding said complainants' as charged in their said bill of complaint, and that the said Fenn has no control over any of said property or effects whatever.

Your respondent, further answering, says that he is informed and believes that the said defendant Fenn made a general assignment to one Enos V.

Robbins, one of the defendants, which was in writing, but that the
125 said deed of assignment is not in the custody or control of your respondent. Your respondent, further answering, says that on or about 15th day of December the said Fenn conveyed to respondent certain real estate. Your respondent does not know what the def't Robbins has done with the property or other things assigned to him by said Fenn. Your respondent does not know how much property the said def't Fenn has in his possession, and knows nothing about the motives the complainants had in filing their bill.

Your respondent, further answering, says that he admits that the defendant Fenn was a long time engaged in the mercantile business in Lacon, and that he had in his possession a large stock of goods and merchandise, but this respondent does not know the value of said stock on or about the 10th of December, 1857. Respondent admits, and supposes it is true, that def't Fenn sold his said goods and merchandise to def'ts Thompson, and took his pay in Lacon City and Marshall County bonds, but respondent only knows the said facts from hearsay and the general talk at the time of said sale.

Said respondent, further answering, says that at the time of said sale of merchandise by said Fenn to said Thompson, this respondent sus-
126 pected and believed said Fenn was embarrased and indebted to a large amount, and was in failing circumstances, but he does not know that def't Thompson knew anything about the circumstances of said Fenn. Your respondent admits that shortly after said sale of goods to said Thompson by said Fenn, said Fenn made an assignment to defendant Robbins.

Said respondent, further answering, says that a short time before the making of said assignment by said Fenn to said Robbins, the said Fenn held the title to about 4,900 acres of land in the county of Vermilion, and that there were trust deeds upon said land to the amount of thirty-two thousand five hundred dollars. One of which deeds, to secure the amount of sixteen thousand dollars, and interest due on the same, $1,100, and one deed of eleven thousand two hundred, ($11,200,) and interest, (1,200) on thesame, and his interest further hypothecated for three thousand more, making 32,500 total incumbrances, was due in the month of May, A. D. 1858, and the other was due about the month of March, 1859, and the three thousand dollars was already due. Your respondent denies that said land is of the value of forty-five thousand dollars, but expressly charges that said land would not at the time of the conveyance by said Fenn to your respondent have sold for thirty-two thousand five hundred dollars, and could not now sell for thirty
127 thousand dollars. That said Fenn made to this respondent a deed of his interest in said land, and that the said land was purchased by respondent in good faith, and for his own use and benefit. Said respondent admits that at the time of the making said conveyances by said Fenn to said respondent, he agreed to buy up fifteen thousand dollars of the paper of said Fenn, and that said Fenn was to receive the same at par. Your respondent, further answering, says that at the time the said Fenn made said quitclaim deed to respondent for said land, said respondent knew said Fenn was in failing and embarrassed circumstances; that he was greatly in debt, and that the opinion of respondent was at the time that said Fenn could be forced to make an assignment for the benefit of his creditors, and that, in the opinion of respondent, the assets of said Fenn would not pay over about cents upon the dollar of his indebtedness, and knowing the nature of some of said Fenn's business, said respondent felt confident that said Fenn would prefer certain creditors, which would diminish the general dividend

to be divided among his said creditors, and as respondent believed a large portion of said creditors would not receive any dividend whatever; that said respondent supposed at the time of the said conveyance by said Fenn to him that he could buy the paper of said Fenn at a merely nominal sum,
128 and not exceeding about five cents upon the dollar, and that, in the opinion of your respondent, all the assets the said Fenn had would not pay the incumbrance upon the said land, even should the said Fenn not prefer certain of his creditors.

Your respondent, further answering, admits that at the time of said purchase by him from said Fenn, he was aware that he was risking about the sum of seven hundred and fifty dollars, the amount he supposed would be necessary to buy said indebtedness of said Fenn, and that if the times would remain hard and money as secure as it then was, and the value of land remain stationary, he supposed he should lose said amount of about seven hundred and fifty dollars, and that if times improved he might make something out of said land by paying up the said two thousand five hundred dollars incumbrance upon the same.

Your respondent, further answering, says that said land would not now sell for said thirty-two thousand five hundred dollars, and that he utterly denies that there was any agreement between him and said Fenn, by which he was to hold said land for the benefit of said Fenn, but that the said purchase was made by him in good faith and for his own benefit, this respondent to make all the profits if any, or to bear all the loss he should sustain
129 in buying the paper of said Fenn if land did not increase in value, and that respondent was not bound to pay said $3,000 incumbrance on said land.

Your respondent further says that he has the paper of said Fenn to about the amount of five hundred dollars, which he intends to apply upon his said indebtedness to said Fenn, and which is now held by def't Robbins; that he is informed and believes, and charges the fact to be, that the said note, made by respondent and delivered to said Fenn, was embraced in the general assignment to the defendant Robbins as assets, and is now held by him, said Robbins, and that this respondent is liable to defendant Robbins for said paper given by him to Fenn.

That the terms and conditions of said sale by Fenn to respondent was that Fenn made to respondent a deed of the lands, and that respondent delivered to Fenn his note for fifteen thousand dollars, due in nine months from the 15th of December, 1857, and payable in the paper of said William Fenn at par, and that the said note of respondent is assigned by Fenn to Robbins; that said lands are described as follows, to wit: section three in town twenty-five north, of range nine east of the third principal meridian, containing 1,218 acres and 38-100; south half of section eight in the same township and range, containing 320 acres; also section seventeen in the same town-
130 ship and range, containing 640 acres; also section twenty-one, section twenty-three, section twenty-seven, and section thirty-five, all in township twenty-six north, of range nine east of the third principal meridian, each section containing 640 acres, and being in all four thousand seven hundred and thirty-eight acres and thirty-eight hundreths of an acre.

Said respondent having fully answered, asks to be discharged with his costs.

WILLIAM B. GREEN.

S. RAMSEY, *Att'y for Green.*
HOYNE, MILLER & LEWIS, *of Counsel for Def't Green.*

STATE OF ILLINOIS, *Marshall County, ss:*

William B. Green, being duly sworn, on oath, says that the foregoing an-

swer, by him signed, has been read in his presence and hearing, and that he is acquainted with the contents thereof, and that according to the best of his knowledge and belief the same is true in substance and in fact.

Sworn to and subscribed before me, Silas Ramsey, notary public in and for said county, this 18th day of September, 1858.

131 Witness my hand and seal of office.

[SEAL.] SILAS RAMSEY, *Notary Public.*

Endorsed: Filed December 28th, 1858.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the twenty-eighth day of December, A. D. 1858, came said complainants, by their solicitors, and filed in the said clerk's office their replications in said entitled cause; which said replications are in the words and figures following, to wit:

United States circuit court, northern district of Illinois, in chancery.

JAMES MYERS, WILLIAM KINSLEY, AND CHARLES STOUT, complainants,
vs.
WILLIAM FENN, ENOS V. ROBBINS, SAMUEL THOMPSON, and William B. Green, defendants.

The replication of James Myers *et al.*, complainants above named, to the separate answer of the said defendant Enos V. Robbins filed herein.

132 These repliants, saving and reserving to themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and they humbly pray as in and by their said bill they have already prayed.

SMITH & DEWEY, *Complainants' Solicitors.*

Endorsed: Filed December 28th, 1858.

WM. H. BRADLEY, *Clk.*

United States circuit court, northern district of Illinois, in chancery.

JAMES MYERS *et al.*
vs.
133 WILLIAM FENN *et al.*

The replication of James Myers et al., complainants above named, to the separate answer of the said defendant Samuel Thompson, filed herein.

These repliants, saving and reserving to themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue

and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and they humbly pray as in and by their said bill they have already prayed.

134 SMITH & DEWEY, *Complainants' Solicitors.*

Endorsed: Filed December 28th, 1858.

WM. H. BRADLEY, *Clerk.*

United States circuit court, northern district of Illinois, in chancery.

JAMES MYERS *et al.*, complainants,
vs.
WILLIAM FENN *et al.*, defandants.

The replication of James Myers *et al.*, complainants above named, to the separate answer of the said defendant William B. Green, filed herein.

These repliants, saving and reserving to themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that

135 any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and they humbly pray as in and by their said bill they have already prayed.

SMITH & DEWEY, *Complainants' Solicitors.*

Endorsed: Filed December 28th, 1858.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the twenty-second day of October, A. D. 1858, came Henry C. Bowen and others, petitioners, by their solicitors, Messrs. Smith & Dewey, and filed in the office of the clerk of said court their petition in said entitled cause; which said petition is in the words and figures following, to wit:

United States circuit court, northern district of Illinois, in chancery.

JAMES MYERS, WILLIAM KINSLEY, AND CHARLES STOUT, complainants,
vs.
136 WILLIAM FENN, ENOS V. ROBBINS, SAMUEL Thompson, and William B. Green, defendants.

To the Honorable Thomas Drummond, judge of said court, in chancery sitting.

Your petitioners, Henry C. Bowen, Wellington Clapp, William Kent, Samuel M. Beckley, Thomas B. Read, Absolom C. Jennings, Joel Read, William K. Hawley, and Richard C. Talbott, of the city of New York, who are citizens of the State of New York, respectfully show unto your honor that your petitioner Henry C. Bowen, in the July term of this court, lately past, recovered a judgement against the above-named defendant William

Fenn for the sum of three thousand two hundred and sixty dollars and ninety-six cents; that your petitioner last named on the 28th day of September, A. D. 1858, caused a writ of execution to be issued out of this court, directed to the marshall of said district, commanding him to execute the same, which said writ was afterwards, to wit, on the first day of October, A. D. 1858, delivered to the said marshal, who afterwards, and on or about the nineteenth day of October, A. D. 1858, returned said writ with his endorsement thereon as follows: "I hereby certify that I cannot find the within-named William Fenn, nor, after diligent search, find any property, either real or personal, belonging to him whereupon to levy this execution to make the amount herein named or any part thereof. I therefore return this writ wholly unsatisfied;" to which execution and return endorsed thereon your petitioners pray leave to refer as forming a part of this their petition.

137

And your petitioners further show unto your honor that said judgment still remains in full force and effect and not reversed, satisfied, or otherwise vacated, but that said William Fenn is still indebted to your petitioner Henry C. Bowen for the same, and also the further sum of seven dollars and eighty cents, marshal's fees upon said execution.

And your petitioners further show unto your honor that your petitioners Wellington Clapp, William Kent, and Samuel M. Beckley, in the said term of July of this court, recovered a judgment against the above-named defendant William Fenn for the sum of thirteen hundred and twenty-two dollars and twenty-two cents; that your petitioners last named on the twenty-eighth day of September, A. D. 1858, caused an execution to be duly issued out of said court, directed to the said marshal to execute; that said execution was afterwards and on the first day of October, A. D. 1858, delivered to the said marshal, who afterwards, and on or about the 19th day of said month of October, A. D. 1858, returned said execution with his endorsement thereon as follows: "I hereby certify that I cannot find the within-named William Fenn, nor, after diligent search, can I find any property, either real or personal, belonging to him whereupon to levy this execution to make the amount herein named or any part thereof. I thereupon return this writ wholly unsatisfied," as by the said execution and the return of the said marshal endorsed thereon and now on file will more fully appear, and to which your petitioners pray leave to refer as forming a part of this their petition.

138

And your petitioners further show unto your honor that said judgment still remains in full force and effect, not reversed, satisfied, or otherwise vacated, and that said William Fenn is still indebted to your petitioner last mentioned for the same, and also for the further sum of seven dollars and eighty cents, marshal's fees upon said execution.

And your petitioner further shows unto your honor that your petitioners Thomas B. Read, Absalom C. Jennings, Joel Read, William K. Hawley, and Richard C. Talbott, in the July term of said court aforesaid, recovered a judgment against said William Fenn for the sum of three thousand nine hundred and sixteen dollars and seventy-five cents, and that your petitioners last named afterwards, and on or about the second day of October, A. D. 1858, caused an execution to be issued out of this court upon the judgement last mentioned in due form of law and directed to the said marshal to be executed, which said execution on the fourth day of October, A. D. 1858, was delivered to the said marshal, who afterwards, and on or about the 19th day of October, A. D. 1858, returned said writ of execution with his endorsement thereon as follows: "I hereby certify that I cannot find the within-named William Fenn, nor, after diligent search, can I find any property, either real or personal, belonging to him, whereupon

139

to levy this execution to make the amount herein named or any part thereof. I therefore return this writ wholly unsatisfied ;" to which execution and return thereon your petitioners pray leave to refer as forming a part of this their petition? And your petitioners further show unto your honor that said judgement still remains in full force and effect, and not reversed, satisfied, or otherwise vacated, but that said William Fenn is still indebted to your petitioners last mentioned for the same, and also for the further sum of seven dollars and eighty cents, marshal's fees upon said execution.

And your petitioners further show unto your honor that the complainants in the foregoing entitled cause have filed their bill in this honorable
140 court to reach the property and effects of the said William Fenn not subject to levy and sale upon execution, and to set aside a certain assignment and *and* certain sales mentioned in said bill of complaint as fraudulent and void as to the creditors of said Fenn, and for such other and further relief in the premises as may be agreeable to equity; to which bill, now on file in the office of the clerk of said court, your petitioners pray leave to refer as forming a part of this their petition. Your petitioners therefore pray that they may be made parties complainants to said bill, and that they may be entitled to the benefit of any decree which may be entered therein, and for such other and further rule or order in the premises as may be agreeable to equity.

And your petitioners will ever pray, &c.

HENRY C. BOWEN,
WELLINGTON CLAPP,
WILLIAM KENT,
SAMUEL M. BICKLEY,
THOMAS B. READ,
ABSALOM C. JENNINGS,
JOEL READ,
WILLIAM K. HAWLEY,
RICHARD C. TALBOTT,
By E. S. SMITH,
Their Agent and Attorney.

SMITH & DEWEY, *Compl'nts' Solicitors.*
E. M. DEWEY, *of Counsel.*

141 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

A. R. Abbot, being duly sworn, on oath, says that he makes this affidavit on behalf of the above-named petitioners and as their agent; that the said petitioners are all non-residents of the State of Illinois and are not now within the State of Illinois to this deponent's knowledge; that this deponent has read the foregoing petition and believes the same true, as appears from the records in the offices of the clerk and marshal of said district.

A. R. ABBOTT.

Subscribed and sworn to this 21st day of October, A. D. 1858, before me.
WM. H. BRADLEY, *Clk.*

Endorsed: Filed Oct. 22, 1858.
WM. H. BRADLEY, *Clerk.*

On this day, to wit, the twenty-second day of October, A. D. 1858, issued out of said clerk's office a notification against said defendants in said entitled cause; which said notification, with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

142 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to William Fenn, Enos V. Robbins, Samuel Thompson, and William B. Green, greeting:

You are hereby notified that on the petition this day filed in the clerk's office of the circuit court of the United States for said northern district by Henry C. Bowen, Wellington Clapp, William Kent, Samuel M. Beckley, Thomas B. Read, Absalom C. Jennings, Joel Read, William K. Hawley, and Richard C. Talbott, they, the said petitioners, by order of said court, are made parties complainants with James Myers, William Kinsley, and Charles Stout to the creditors' bill filed in said court on the thirty-first day of July, A. D. 1858, on the chancery side thereof, against you, and that unless you and each of you appear and enter your appearance to the same on or before the first Monday of December next the complaint as to said petitioners will be taken as confessed against you, and a decree entered accordingly.

To the marshal of said northern district to execute. Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States of America, at Chicago aforesaid, this twenty-second day of October,
143 A. D. 1858.

[SEAL.] WM. H. BRADLEY, *Clerk.*

I have served this writ by reading the same to the within-named William Fenn Oct. 28th, 1858, and by leaving a copy of the same with him; also on Enos V. Robbins and William B. Green by leaving a copy of the same with each of them; and on Samuel Thompson by leaving a copy thereof with a free white person above the age of ten years, at his usual place of residence.

C. N. PINE,
U. S. Marshal, Northern Dist. of Ill's,
By JOHN S. MULLINER, *Deputy.*

Endorsed: Filed Nov. 9th, 1858.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the twenty-fifth day of January, A. D. 1859, came said complainants, by their solicitors, Messrs. Smith & Dewey, and filed in said clerk's office their replication in said entitled cause; which said replication is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

144 Circuit court of the United States for the seventh circuit and northern district of Illinois.

JAMES MYERS, WILLIAM KINSLY, AND CHARLES STOUT, complainants,
vs.
WILLIAM FENN, ENOS V. ROBBINS, SAMUEL THOMPSON, and WILLIAM B. GREEN, defendant.

The replication of the above-named complainants to the several answer of William Fenn, one of the above-named defendants.

These repliants, saving and reserving to themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said

answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by their said
145 bill they have already prayed.

SMITH & DEWEY, *Complainants' Solicitors.*

Endorsed: Filed Jan'y 25, 1859.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the fourth day of April, A. D. 1859, in the record of the proceedings of said court in said entitled cause is the following entry, to wit:

JAMES MYERS, WILLIAM KINSLY, AND CHARLES STOUT
v.
WILLIAM FENN, ENOS V. ROBBINS, SAMUEL THOMPSON, and WILLIAM B. GREEN. } In chancery.

Now come the complainants, by Smith & Dewey, their solicitors, and, on motion, leave is given the complainants to examine the said defendant William Fenn before the master, upon oath, and the said master is hereby authorized and empowered to issue process to compell the attendance of said defendant before him for that purpose.

On this day, to wit, the seventeenth day of March, A. D. 1862, in the record of the proceedings of said court in said entitled cause is the following entry, to wit:

146 JAMES MYERS, WILLIAM KINSLEY, AND CHARLES STOUT, HENRY C. BOWEN, WELLINGTON CLAPP, WILLIAM KENT, SAMUEL M. BECKLEY, THOMAS B. READ, ABSOLOM C. JENNINGS, JOEL READ, WILLIAM R. HAWLEY, AND RICHARD C. TALBOTT,
v.
WILLIAM FENN, ENOS V. ROBBINS, SAMUEL THOMPSON, and WILLIAM B. GREEN. } Chancery.

This cause came on to be heard at this term and was argued by counsel; and thereupon, on consideration thereof, it is ordered, adjudged, and decreed as follows, namely:

That the above-named complainants James Myers, William Kinsley, and Charles Stout recover against the defendants William Fenn the sum of one thousand one hundred and fifty-two dollars and thirty-nine cents, with interest thereon from the twenty-fourth day of May, A. D. one thousand eight hundred and fifty-eight, at and after the rate of six per cent. per annum.

That the above-named complainant Henry C. Bowen recover against the said defendant William Fenn the sum of three thousand two hundred and sixty dollars and ninety-six cents, with interest thereon from the fourteenth day of September, A. D. one thousand eight hundred and fifty-eight,
147 at and after the rate of six per cent. per annum.

That the above-named complainants Wellington Clapp, William Kent, and Samuel M. Beckley recover against the said defendant William Fenn the sum of one thousand three hundred and twenty-two dollars and twenty-two cents, with interest thereon from the seventeenth day of September, A. D. one thousand eight hundred and fifty-eight, at and after the rate of six per cent. per annum.

That the above-named complainants Thomas B. Read, Absolom C. Jennings, Joel Read, William K. Hawley, and Richard C. Talbott recover against the above-named defendant William Fenn the sum of three thousand nine hundred and sixteen dollars and seventy-five cents, with interest thereon from the twenty-first day of September, A. D. one thousand eight hundred and fifty-eight, at and after the rate of six per cent. per annum.

That J. Tilden Moulton, esq., master in chancery of this court, be, and he hereby is, appointed receiver of all the goods, chattels, chattels real, and real estate, things, and choses in action, notes, accounts, dues, demands, equitable interests, securities, property, and effects of every name and nature whatsoever, of the said defendant William Fenn; and also all
148 the goods, chattels, chattels real, property, equitable interest, securities, and effects of every name and nature whatsoever, in the hands of the defendant Enos V. Robbins on the thirty-first day of July, A. D. one thousand eight hundred and fifty-eight, the date of filing the complainants' bill of complaint herein, and held and received by him under and by virtue of the assignment made, executed, and delivered by the said defendant William Fenn to the said defendant Enos V. Robbins on the thirtieth day of December, A. D. one thousand eight hundred and fifty-seven.

That the said assignment, made, executed, and delivered by the said defendant William Fenn to the *to the* defendant Enos C. Robbins on or about the thirtieth day of December, A. D. one thousand eight hundred and fifty-seven, was made with the intent and purpose to hinder, delay, and defraud the complainants and other creditors of the said William Fenn, and is fraudulent and void as to them, and that said assignment be, and the same is hereby, set aside.

That the said defendants William Fenn, upon notice in writing being served upon him of this decree, be and appear before the said receiver and assign, transfer, and deliver over to said receiver, under oath, all his goods,
149 chattels, chattels real, or real estate, note accounts, dues, demands, things and choses in action, equitable interests, property securities, and effects, and all the proceeds or avails thereof, and all books, papers, and vouchers relating thereto, and that he be and appear before such receiver from time to time and produce such books and papers and submit to such examination as the receiver shall direct in relation to any matter which he might have been legally required to disclose under the bill and answer filed herein.

That the said defendant Enos C. Robbins, upon notice being served upon him of this decree, be and appear before said receiver and assign, transfer, convey, and deliver over to said receiver, under oath, all the goods, chattels, chattels real, or real estate, notes, accounts, dues, demands, moneys, things and choses in action, equitable interests, property securities, and effects, and all the avails and proceeds thereof, or of any part or parts thereof, in his hands on the thirty-first day of July, A. D. one thousand eight hundred and fifty-eight, the date of filing the complainants' bill of complaint herein, and received by him under the said assignment made, executed, and delivered to him by the said defendant William Fenn, and all books, papers, and vouchers relating thereto, and that he be and appear before such receiver from time to time and produce such books and papers and submit to such
150 examination as the receiver shall direct in relation to any matters which he might have been legally required to disclose under the bill and answers filed herein.

That said complainants recover against the said defendant William Fenn their costs of this suit to be taxed.

That said receiver be, and he hereby is, authorized and empowered to sell and dispose of the property and effects assigned to him under and by virtue of this decree; that he appropriate and apply all moneys received by him, and the proceeds and avails of all sales made by him, first, to the payment of the amount hereinbefore decreed to be recovered by the complainants James Myers, William Kinsley, and Charles Stout against the said defendant William Fenn; and after the full and complete payment and satisfaction of said amount, then the balance of all moneys, property, or the avails or proceeds thereof to be appropriated and applied by said receiver to the payment of the several amounts hereinbefore decreed to be recovered in favor of the other complainants herein pro rata.

That the said complainants, or the said receiver, be at liberty to apply to the court from time to time for such further or other directions as may be necessary, and that the said receiver make report of his proceedings to this court.

151 On this day, to wit, the twenty-second day of March, A. D. 1862, came said complainants, by their solicitor, E. S. Smith, esq., and filed in said clerk's office their stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Circuit Court Northern Dist. of Illinois:

JAMES MYERS, WILLIAM KINSLEY, CHARLES STOUT, *et al.*,
v.
WILLIAM FENN, ENOS V. ROBBINS, SAMUEL THOMPSON, and WILLIAM B. Green.

It is hereby stipulated that said suit be dismissed as to Samuel Thompson and William B. Green without costs to said defendants.

E. S. SMITH, *Compl'ts' Sol'r.*

March 22, 1862.

Endorsed: Filed March 22, 1862.

WM. H. BRADLEY, *Cl'k.*

And now on this 4th day of April, A. D. 1862, it being one of the days of the March term of said court, A. D. 1862, the said defendants, by their solicitors, filed in said court their motion in the words and figures following, to wit:

151½ United States court.

MYERS
vs.
FENN.

And now comes the said defendants and move for a rehearing of said cause, and that the decree heretofore made in said cause against the said William Fenn and Enos V. Robbins be set aside, and that a decree be entered in said cause in favor of said defendants and against said complainants.

HOYNE, MILLER & LEWIS, *Def'ts' Sol'rs.*

Endorsed: Filed April 4, 1862.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the fifth day of April, A. D. 1862, come said parties, by their solicitors, and filed in said clerk's office their stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

152 United States circuit court, seventh circuit, northern district of Illinois.

JAMES MYERS AND OTHERS
v.
WILLIAM FENN AND OTHERS.

It is hereby stipulated by and between the solicitors for the respective parties to the above-entitled cause that the motion to vacate the decree heretofore entered in the above-entitled cause, and which said motion was called up for argument this day, be postponed, and argued and determined at any future term of this court with the same effect as if said motion had this day been decided, and without any prejudice to the rights of the defendants herein in consequence of the conclusion of the term or the adjournment of the court without day.

Chicago, April 5, 1862.

E. S. SMITH, *Compl'ts' Sol's*
HOYNE, MILLER & LEWIS.

Endorsed: Filed April 5th, 1862.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the fifth day of April, A. D. 1862, in the record of the proceedings of said court in said entitled cause is the following entry,
153 to wit:

JAMES MYERS, WILLIAM KINSLEY, AND CHARLES STOUT, HENRY C. Bowen, Wellington Clapp, William Kent, Samuel M. Beckley, Thomas B. Read, Absolom C. Jennings, Joel Read, William K. Hawley, and Richard C. Talbott,
v.
WILLIAM FENN, ENOS V. ROBBINS, IMPL'D WITH SAMUEL THOMPSON and William B. Green.
} Chancery.

Now come the complainants, by their solicitors, and thereupon this bill is dismissed as to the defendants Samuel Thompson and William B. Green, as per stipulation filed herein, and thereupon comes on to be heard the motion of the defendants yesterday filed for a rehearing of this cause and to set aside the decree of the seventeenth of March last, and after a partial hearing the further hearing is postponed under a stipulation this day filed by the parties by their solicitors.

On this day, to wit, the sixth day of February, A. D. 1863, in the record of the proceedings of said court in said entitled cause is the following entry, to wit:

JAMES MYERS, WILLIAM KINSLEY, CHARLES STOUT, HENRY C. Bowen, Wellington Clapp, William Kent, Samuel M. Beckley, Thomas B. Read, Absolom C. Jennings, Joel Read, William K. Hawley, and Richard C. Talbott,
154
vs
WILLIAM FENN AND ENOS V. ROBBINS, IMPL'D WITH SAMUEL Thompson and William B. Green.
} Chancery.

On motion of the complainants James Myers, William Kinsley, and Charles Stout, by their solicitors, leave is given them to file a petition herein.

On this day, to wit, the second day of March, A. D. 1863, in the record of the proceedings of said court in said entitled cause is the following entry, to wit:

James Myers, William Kinsley, and Charles Stout, Henry C. Bowen, Wellington Clapp, William Kent, Samuel M. Beckley, Thomas B. Read, Absolom C. Jennings, Joel Read, William R. Hawley, and Richard C. Talbott, } Chancery.
v.
William Fenn, Enos V. Robbins, impleaded with Samuel Thompson and William B. Green.

155 The court having considered and being fully advised on the motion heretofore made, vacates the decree entered herein on the seventeenth day of March last, and thereupon the complainants, by their solicitors, file their petition to set aside and vacate the order of dismissal as to the defendants Samuel Thompson and William B. Green entered on the fifth day of April, eighteen hundred and sixty-two.

Petition to set aside order of dismissal.

On the same day, to wit, the second day of March, A. D. 1863, came said complainants, by their solicitor, E. S. Smith, esq., and filed in said clerk's office their petition in said entitled cause; which said petition is in the words and figures following, to wit:

Circuit court of the United States for the eighth circuit and northern district of Illinois.

James Myers, William Kinsley, Charles Stout,
vs.
William Fenn, Enos V. Robbins, Samuel Thompson, William B. Green. } In chancery.

To the Hon. Thomas Drummond, judge of the circuit court of the
156 United States for the eighth circuit and northern district of Illinois:

The petition of James Myers, William Kinsley, and Charles Stout, the complainants in the above-entitled cause, respectfully showeth that on the 31st day of July, A. D. 1858, your petitioners filed their bill of complaint herein, setting up the recovery of a judgment for $1,152 39 against the above-named defendant William Fenn, the issuance of execution thereon and its return unsatisfied, alleging that, December 10th, 1857, the said defendant Fenn made a sale of a stock of goods valued at $18,000 00 to the defendant Samuel Thompson; that the said defendant Fenn soon after made a sale of 5,000 acres of land to the defendant William B. Green, and on the 30th day of December, 1857, made an assignment of all his property and effects to the defendant Enos V. Robbins, and charging that the said sales and assignment were made with intent to hinder and delay creditors, and therefore void, and praying such relief therein as to your honor should seem best.

Your petitioners further show unto your honor that each of the above-named defendants subsequently filed his separate answer herein. The answer of the defendant Fenn shows that at the time of both the sales above named he was largely in debt, embarrassed, and in failing circumstances.

The answer of the defendant Thompson shows that on the 10th day
157 of December, 1857, the time of the sale from Fenn to him, he well knew that Fenn was embarrassed and largely in debt, and for a stock of goods valued at $18,000 00 he gave Fenn nine one-thousand-dollar Lacon City bonds and eleven one-thousand-dollar Marshall County bonds. The an-

swer of defendant Robbins shows that only three of these bonds were embraced in the assignment, and your petitioners have reason to believe that the object of the said sale to defendant Thompson was merely to exchange the said stock of goods for a species of property which could not be levied on by execution at law, and thereby hinder and defraud the creditors of said defendant Fenn.

The answer of defendant Green shows that on the 15th day of December, 1857, fifteen days before the assignment to defendant Robbins, the said Green purchased of the defendant William Fenn 5,000 acres of land in Vermilion County, Illinois, and paid therefor a nominal consideration of $45,000 00, by assuming the discharge of incumbrances upon said land to the amount of $30,000 00, and giving his note for the balance, $15,000 00, payable in notes of Fenn then outstanding, at par. That said Green expected, at the time of said sale, to buy up the outstanding paper of Fenn at five cents on the dollar and well knew that the defendant Fenn
158 was then greatly in debt, embarrassed, and in failing circumstances, and was on the eve of an assignment without sufficient assets to pay his creditors, and your petitioners have reason to believe, and do believe, that the sale so as aforesaid made to defendant Green was made by collusion between the parties thereto and with intent to hinder and delay the creditors of defendant Fenn.

Your petitioners further show unto your honor that they are advised by counsel that the said assignment was by decree herein entered on the seventeenth day of March, 1862, set aside by your honor solely for reasons appearing on its face and not upon any proofs taken in the cause; that under the belief that said decree was final and no further evidence would be necessary in the case, the solicitor of your petitioners, as they are informed and believe, afterwards, to wit, on the 22nd day of March, 1862, entered into and filed a stipulation, agreeing therein that said cause should be dismissed as to the defendants Samuel Thompson and William B. Green, and that afterwards, to wit, on the 5th day of April, 1862, an order was entered therein dismissing the cause as to the last-named defendants in accordance with said stipulation.

Your petitioners further show unto your honor that they are in-
159 formed by counsel that since the rendition of said decree, your honor has opened the same and required your petitioners to furnish proof of the fraudulent character of said assignment, independent of the reasons for its nullity which appear on the face thereof.

Your petitioners further show unto your honor that they are informed and believe that the said order of dismissal as to the defendants Thompson and Green would never have been consented to by the solicitor of your petitioners had it not been supposed at the time that the decree rendered in said cause was to be a final and conclusive disposition of the same; that by consenting to said order of dismissal your petitioners thereby surrendered the enforcement of their rights against the defendants Thompson and Green as fraudulent vendees of defendant Fenn, and were only induced to do so by the hope of a more speedy termination of the cause, and by the belief that the assets named in the assignment would be sufficient to pay off the debts of your petitioners and of the other parties complainants hereto.

Your petitioners further show unto your honor that the assets named in said assignment, even if the same should be set aside by your honor, would not be sufficient to pay off the judgements of your petitioners and of
160 the other parties complainant hereto, and that the fraudulent character of the sales made by the defendant Fenn to the defendants Thompson and Green would clearly appear upon an examination of the said defendants before the master in chancery of this honorable court.

Your petitioners therefore pray that the order of dismissal as to the defendants Samuel Thompson and William B. Green, so as aforesaid entered herein, may be set aside; that the said cause may be in all things reinstated and restored to the same position in which it stood previous to the rendition of the decree herein, and that your petitioners and the other parties complainant hereto may have an order to examine all of the defendants herein orally before the master in chancery of this honorable court. And your petitioners will ever pray, &c.

Feb'y 6th, 1863.

JAMES MYERS,
WILLIAM KINSLEY,
CHARLES STOUT,
By E. S. SMITH, *Sol'r.*

Endorsed : Filed March 2d, 1863.

WM. H. BRADLEY, *Cl'k.*

161 On this day, to wit, the tenth day of March, A. D. 1863, a subpœna issued out of said clerk's office against said defendants in said entitled cause; which said writ of subpœna, together with the memorandum thereto attached, and the return of the marshal endorsed thereon, is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

The United States of America to Samuel Thompson and William B. Green, impleaded with William Fenn and Enos V. Robbins, greeting:

We command you and every of you that you appear before our judges of the circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of April next, to answer the bill of complaint or petition of James Myers, William Kinsley, and Charles Stout, filed March second, A. D. 1863, in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

162 Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States of America, at Chicago aforesaid, this tenth day of March, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the eighty-seventh.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Memorandum.—the above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court at Chicago aforesaid, on or before the day to which the above writ is returnable the complaint will be taken against them as confessed, and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

Executed the within writ by reading to and in the hearing of the within-named William B. Green, and also by delivering to him a true copy thereof, this 23d day of March, A. D. 1863.

J. R. JONES,
U. S. Marshal N. District Ill's,
By P. MUNSON, *Deputy.*

Endorsed : Filed April 9th, A. D. 1863.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the first day of December, A. D. 1863, in the
163 record of the proceedings of said court in said entitled cause is the following entry, to wit:

JAMES MYERS, WILLIAM KINSLEY, *et al.*
vs.
WILLIAM FENN, ENOS V. ROBBINS, *et al.* } Chancery.

On application of complainants' solicitor and on affidavit filed, leave is given the complainants to take the examination of William Fenn to-day or to-morrow, at complainants' costs, including a fee of ten dollars to the opposing counsel.

On this day, to wit, the fifth day of December, A. D. 1863, in the record of the proceedings of said court in said entitled cause is the following entry, to wit:

JAMES MYERS, WILLIAM KINSLEY, *et al.*
vs.
WILLIAM FENN, ENOS V. ROBBINS, *et al.* } Chancery.

On motion of complainants' solicitor, time is extended thirty days within which to examine the defendant William Fenn, upon giving due notice to defendants' counsel of the time and place of taking such examination.

If such examination is taken out of this State, the same is to be
164 taken upon written interrogations.

And afterwards, to wit, on the 9th day of December, A. D. 1863, in the record of proceedings of said court in said entitled cause is the following entry, to wit:

JAMES MYERS, WILLIAM KINSLEY, AND CHARLES STOUT
vs.
WILLIAM FENN, AND ENOS V. ROBBINS, impl'd, &c. } Chancery.

The court having fully considered upon the application of the complainants heretofore made on petition to vacate the order of dismissal heretofore entered as to former defendants Samuel Thompson and William B. Green, overrules the same.

The examination of E. V. Robbins, taken before J. T. Moulton, esq., master in chancery, and read on the hearing of this cause, is in the words and figures following, to wit:

165 1 int. What is your name, age, place of residence, and occupation in life?

Ans. Name, Enos V. Robbins; age, 39 years; residence, Chicago; occupation, commission business.

2 int. Where was your residence and what was your occupation in the year 1857, in December?

Ans. My residence was Lacon, Illinois. In December, I had no particular business on hand except purchasing and shipping grain, and very little of that at that time.

3 int. How long did you reside in Lacon, Illinois, and what was your occupation during all the time you was there?

Ans. I was there eight years nearly. I went there in May, 1855, and left last April. I followed no one business except the grain trade all the time. I was in the mercantile business the first nine months, and in connection with this merchandizing I have carried on the grain trade all the time. After being out of the mercantile business somewhere about a year, I purchased a stock of goods and continued in the business, I should judge, about

fifteen months. After being out about six or eight months I went into the mercantile business again, and continued in it, I can't tell whether it was two or three years; I guess it was about two years and nine months. That closed up my merchandizing; since that I have spent some time south,
166 in the cotton trade, perhaps three months. This is the business I have followed, as I said before, but I have made trades outside of any business, and I have spent more or less time in attending to this assignment.

4 int. Have you now stated all the business and kinds of business in which you were engaged during your residence in Lacon?

Ans. I have according to my best recollection, except I haven't stated what these outside trades were, and I couldn't state them all. I have had no other regular business.

5 int. What do you mean by outside trades? State your best recollection as to the nature, number, and amount of said trades in which you were engaged during this time.

Ans. I mean that I have occasionally bought grain here in Chicago; I have bought dressed hogs. I have bought hog products, such as hams and lard; I have bought and sold real estate and other trade, which I cannot now recollect, such every business man is always engaged in. As to the number and amounts I cannot recollect, but I should think that my operations of that kind during the eight years might amount to a hundred thousand dollars.

6 int. What was the nature of the mercantile business in which you
167 state you were engaged during the different periods of this time?

(This course of examination is objected to by Mr. Miller, as being an unnecessary waste of time, and as having no bearing whatever upon any of the questions involved in this case.)

Ans. It was dealing in dry-goods and groceries, hardware and crockery.

7 int. What amount of mercantile business did you do during this time?

Ans. My average annual sales during the time I was in the business was about $40,000 a year.

8 int. What amount of cash capital had you invested in all the business you were engaged in at the time you last went out of the mercantile business in Lacon?

Ans. Of cash capital, not to exceed $15,000.

9 int. How long after you last went out of the mercantile business in Lacon before this assignment was made to you?

Ans. The assignment was made first.

10 int. How long before you last went out of the mercantile business in Lacon was this assignment made?

Ans. I should think about three years and three months. After the
168 assignment was made I was out of the mercantile business, I should think about four months.

11 int. What business were you engaged in at the date of this assignment?

Ans. Nothing excepting the grain trade.

12 int. Were you doing a heavy grain business at that time?

Ans. Doing a very light business at that time. It was a season of the year when I couldent do much.

13 int. Did not your business of all kinds at that time occupy all the time you had to devote to business?

Ans. It did not.

14 int. What portion of it did it occupy?

Ans. It wasn't necessary for me to spend any time. I can give the reasons why if counsel wish it.

15 int. Who did your business for you at that time?

Ans. I had a man by the name of Kenedy to buy grain for me, which was all the business I had.

16 int. State whether or not during all the time you acted under this assignment you devoted all your time to it; and if not, what proportion
169 of your time you devoted to it, what proportion in relation to other business you were engaged in as near as you can recollect.

Ans. For the first few months after the assignment I rented an office for the express purpose of doing the assignment business, and gave it my personal attention and spent at least nine tenths of my time in that business. After I went into merchandising again I had a clerk that took charge of the books and I attended to collecting, &c. I gave it all the time it required, all that there was anything to do. I couldn't give it exact; it might have taken half my time; some days it might take all my time, and other days not so much.

17 int. Did it take half your time to attend to the duties of this assignment during all the time you acted under it?

Ans. I should think it did, and more to. If the business had come before me as fast as I could do it, it could have been done in less time, but it did not, and yet it was necessary for me to be in the office to attend to it whenever it did come.

18 int. How long had you known Wm. Fenn before this assignment, and were you acquainted with the business he was doing before that time? and if so, how long before?

170 Ans. I knew him between two and three years. I knew what business he was in during what time I knew him.

19 int. Did you know at any time during those two or three years anything about the extent of his business and the manner in which he was doing it? State fully what you know in regard to the capital which said Fenn had, the manner in which he bought and sold goods so far as credit was concerned, his profits and losses and debts and liabilities.

Ans. I did not. I have no means of knowing anything about it up to the time Mr. Fenn first spoke to me about the assignment.

20 int. Had you no information or belief in respect to the matters inquired of in the last int. during that time?

Ans. I had my oppinion in regard to him as a business man.

21 int. From what was that oppinion derived?

Ans. From various reasons. In the first place, from what I had heard said of his former business life and from talking with him and getting his views on business. Those were the principal things; would occasionally hear of a trade of his making.

171 22 int. State what that opinion was as to the matters inquired of int. 19.

Ans. My oppinion was that he was not a good, snug business man. It was also my oppinion, after I became acquainted with him, that he had not enough to pay his debts, tho' I have no doubt he thought he had. I have no doubt he bought his goods on credit. We had no man in our town whose credit stood higher than his up to about the time of the assignment, so far as my knowledge goes. I would not have sold him a thousand dollars' worth of goods for three months before the assignment without taking security, yet I never heard his credit doubted.

23 int. Did you know, previous to this assignment, of Mr. Fenn's putting any of his property out of his hands or doing anything to prevent his creditors from reaching any of his property?

Ans. I did not.

24 int. Do you not know that said Fenn put the stock of goods in his store at Lacon out of his hands previous to this assignment?

Ans. I do not, but have every reason to believe he made a bona fide sale to Samuel Thompson.

25 int. State fully what you know in regard to said sale.

Ans. I simply know what the parties told me, Fenn and Thompson.
172 That was to the effect that Fenn sold his stock to Thompson. The stock amounted to between seventeen and eighteen thousand dollars, according to the best of my recollection. I think the most of that was paid for in bonds. I don't know but the whole was. I don't know as I ever knew bonds of Marshall County and of Lacon City, The goods were in the store occupied by Fenn, and Thompson went right in and took possession of them. I think Thompson owned the store building then; I know he did at one time. I knew that they took an inventory at the time of the sale. The store was closed and the clerks made an invoice. It must have taken them five or six days to take the inventory.

26 int. How long before this sale took place did you know or had you heard that Fenn was going to sell out?

Ans. My oppinion is that the sale was very nearly or quite concluded before I heard of it. My office was in the same building with his store. It is my oppinion that the sale was not known till the store was closed and they had commenced taking an inventory.

27 int. State, if you know, at what price these goods were sold to Thompson, and whether or not the bonds that were paid to Fenn were taken at their par value.

Ans. I was told by the parties that the goods were sold at New
173 York cost; that is, at their cost in New York. I can't say positively but think that the bonds were taken at par.

28 int. State, if you know, what was the cash value of these bonds at the time of the sale to Tompson, and in how long time they were payable.

Ans. My oppinion, from what sales I know of about that time, is that it was about seventy cents on the county and about eighty on the city. They were payable in 20 years from their date, and had run from one to two years.

29 int. Do you know whether anything else was paid for these goods besides these bonds?

Ans. My opinion is that either about $500 00 was credited to Mr. Fenn by Mr. Thompson or he agreed to pay about that amount of little debts due by Mr. Fenn about town.

30 int. What became of these goods after Thompson took possession of them?

Ans. Mr. Thompson retailed from the stock from three to four months, according to the best of my recollection; it might have been longer. I don't think it was any longer. He then sold the stock to me.

174 31 int. What was Thompson's business previous to his purchase of this stock of goods, and was he ever before engaged in the mercantile business?

Ans. He was a railroad contractor. I don't know whether he was ever before engaged in the mercantile business or not. I never knew of his being in trade.

32 int. Was Thompson acquainted with the mercantile business, or did he know anything about selling goods at the time of this sale?

Ans. I don't know the extent of his knowledge of goods. My opinion is that he is not an experienced merchant.

33 int. Does Thompson still reside at Lacon? If not, where does he reside, and when did he leave Lacon?

Ans. He does not. I do not know where he resides. I think he left there about four years ago.

34 int. What did you pay Thompson for this stock of goods?

Ans. The stock at the time I bought it invoiced, at New York cost, about $11,000 00. We considered it worth $8,000 00. I paid him in Chicago real estate—a river lot, which we considered worth, in the trade, $24,000 00. The balance, except an incumbrance on the river lot of about
175 $5,000 00, I took in other real estate.

35 int. What became of this lot after it went into the hands of Thompson?

Ans. I understand that the city took a portion of the lot and the balance has since been sold for the incumbrance.

36 int. Did Thompson ever receive anything for that lot or realize anything out of it?

Ans. Not to my knowledge.

37 int. Do you know or have you any reason to believe that Thompson knew at the time he bought these goods of Fenn that Fenn was embarrassed and in failing circumstances and unable to pay his debts?

Ans. I don't know that he knew it, and I don't know that I have any reason to believe that he knew it.

38 int. Did you or not know before this assignment to you that said Fenn had put any other property out of his hands or had made sale of any other property during the month of December, 1857?

Ans. I knew that he sold some real estate to Wm. B. Green.

39 int. State fully all that you know about the sale of real estate
176 to Wm. B. Green.

Ans. I know that he sold. I think it was about 5,000 acres of land in Vermillion County, about the 15th of December. He sold it subject to an incumbrance of about $28,000 00; took Wm. B. Green's note, payable in Wm. Fenn's paper, for $15,000 00 within nine months, and Wm. B. Green gave him a written obligation to take up all Fenn's liabilities on that land, amounting to about $28,000 00.

40 int. What became of the note that Green gave for this land?

Ans. It was assigned to me, that is, put in to this assignment.

41 int. Has Green ever taken up this note or paid anything upon it? If so, in what way and how much?

Ans. He has paid $335 34, being part of a note which Green held against Mr. Fenn, said note being a note which Fenn gave to Livingston Roberts. This was paid to me since the assignment.

42 int. What was the standing of Wm. B. Green as to what he was worth over and above his debts at the time of the purchase of this land, to the best of your knowledge?

Ans. I know but little of him personally; I think he was considered good for any reasonable amount. My opinion now is that he was not at
177 that time worth much above his debts, the way real estate turned.

43 int. Was the sale of this land or the fact that was to be made generally known in Lacon until after it was completed?

Ans. Not to my knowledge. I did not know it until the time it was made.

44 int. Where you present when the bargain for the sale of this land was made? If so, when was it made and who else was present, if any one, and who first proposed to make the bargain, and what was said by Fenn to Green about the land as near as you recollect?

Ans. I was present during some of the conversation, but my opinion is that they had talked some about the land before I was with them. It was Lacon. I have no recollection of any one being present beside Green and myself. I presume Mr. Fenn first proposed to make the bargain, but I have no means of knowing. I don't know as I can recollect any of the conversation.

45 int. What did Green do with the land?

Ans. He didn't do anything with it.

46 int. Is the land still owned by Green, and if not, what became of it, and who does the title now stand?

178 Ans. Mr. Green does not own the land. The incumbrance on a part of it was a mortgage, and that has been sold under the mortgage. That mortgage was $15,000 00 and interest. The interest of the incumbrance on the other part was a deed from Fenn to Thomas Keyton, of New York State, and a contract given by Keyton back to Fenn. The deed to Keyton was to secure $11,200 first, and the contract back to Fenn was to convey the land back to Fenn in case that amount was paid within a given time. I am told that I have every reason to believe that the contract was forfeited and Keyton still holds the land. I think this contract was in force at the time of the sale of the land to Green.

47 int. To whom did this mortgage run that you mentioned in your last answer, and who now has the title to the land covered by said mortgage? How did he come by said title and who is now in possession of said land?

Ans. This $15,000 00 was obtained from the New Castle Bank, Pennsylvania. The mortgage either run to them or in trust for them. I was told that the land was sold under that mortgage, and I have heard nothing from it since. I don't know who now has possession of the land.

48 int. Did said Green ever pay anything on the incumbrance on said land or pay anything in any way towards the consideration for said

179 land, except the $335 34 which you say he paid on said note?

Ans. Not to my knowledge.

49 int. Did said Green ever take possession of said land or any part of it after he purchased it of said Fenn, or exercise control over it in any way or go near it to your knowledge?

Ans. I think all. The only possession he ever took of the land was to take the deed. I think he went to see the land, but it was sold very soon after, under the incumbrance, within a year, I presume.

50 int. Does said Green still reside in Lacon? If not, where does he reside?

Ans. He does not, and did not at the time reside in Lacon. He resides about ten miles east of Lacon. He is on a farm.

51 int. What was his business at the time he purchased this land of Fenn?

Ans. He was a farmer.

52 int. Has he ever dealt in real estate? If so, to what extent, if you know.

Ans. He used to deal in real estate more or less, but to what extent I have no means of knowing. I know about it only from hearsay.

180 He dealt in it occasionally, but his business was farming. He is quite an extensive farmer. He had in his possession a good deal of real estate, but as for being what you would call a real estate man, he wasn't. He used to be buying and selling real estate, but this is the most extensive trade I ever know him to make.

53 int. How many bonds did Thompson give Fenn for that stock of goods, and what became of those bonds?

Ans. According to the best of my recollection, I was told that he received from sixteen to eighteen bonds of $1,000 00 each. Three of those bonds in the assignment to me. I can't state the number that went to any other place, but was told that he let a portion of them go to a bank in Peoria to pay a debt of about $6,000 00. I should judge that about eight of them went there, but can't say. I think he had to discount the balance, as it was a cash debt. I was also told that he paid a debt to one banker in Lacon, Wm. S. Crane, a debt of somewhere from four to five thousand dollars, according to the best of my recollection. I don't know how many bonds, probably five. I don't know where the others went to, if there were any.

54 int. When were these bonds given to these folks to pay these
181 debts, as you have mentioned in your last answer?

Ans. I can't give you the exact date, but it must have been the sale of the goods and the assignment. It was before the assignment.

The further examination is postponed to to-morrow morning at ten of the clock.

J. T. MOULTON.

THURSDAY, *Mar.* 10, 186 .

Resumed the examination pursuant to adjournment.

55 int. How long before the assignment were those bonds delivered and paid out by Fenn?

Ans. I don't state the exact time, but presume it was two weeks or more.

56 int. Did Green at the time he purchased this land of Fenn, that Fenn was largely indebted, in failing circumstances and unable to pay his debts? And if you have no knowledge on the subject, state your information and belief.

Ans. I do not know that he knew it. My information is nothing. I have no belief about it, for I know nothing about it. I think he must have known he was in debt, for every man is in debt that is doing the business Mr. Fenn was.

182 57 int. How long before the assignment by Fenn to you did you first have any conversation with Fenn in regard to the assignment?

Ans. According to the best of my recollection it must have been about two weeks.

59 int. What was that conversation?

Ans. Now I can't give you all of it of course. In the first place he asked me if I would accept of the assignment. My answer was that I preferred not to; that is, I would not. He came to me again and said that he had been talking with some of his friends and they thought I would be as good a man as he could get, and he urged me to take it, and after looking into his affairs a little I finely concluded. In examining into his affairs I first asked him how much he was owing and how much he would probably pay on the dollar. He told me he thought he was owing about $60,000 00. I think his answer was from $60,000 00 to 65,000 00. That he felt obliged to classify his creditors, and that he would pay the first class in full and at least fifty cents on the second class, and that the most of the balance of his creditors were secured by real estate.

60 int. Did he inform you at the time, about 2 weeks previous to the assignment, of the sales of the stock of goods to Thompson and the
183 land to Green?

Ans. I don't think he said anything about the stock of goods; that sale was made some time previous; I think the land sale was made about that time; I don't recollect that he said anything about the land sale at this time.

61 int. Did you know of both of these sales at this time?

Ans. I knew of the sale of goods and think I knew of the sale of land.

62 int. When did you first make an examination into the indebtedness and assets of Fenn, and what was the result of that examination?

Ans. About a day or two before the assignment. The result was that his indebtedness was larger than his representation, and I told him that his assets were not worth what he valued them. My conclusion was, allowing his book accounts to be good without any legal offsets, that he could not pay over from 15 to 25 cents on the second class.

63 int. What did Fenn say to you, if anything, at the time the assignment was made and before about his reasons for making the sale of the goods to

Thompson—the sale of the land to Green and the assignment to you?

184 Ans. He said nothing in connection with the assignment; he said nothing about the sale of the goods whatever, but asked my opinion with regard to the sale of the land. I told him I thought it would be a good sale. His reasons were that the incumbrance was nearly all the land was worth, and in any event he could not redeem it. His reasons for making the assignment was that he couldn't pay his creditors in full; he wanted his assets to go as far as possible that his creditors might be paid equally, as equally as possible, according to the nature of the indebtedness.

64 int. When did Fenn make an assignment to you, what was contained in the assignment, what was the nature of it, what did you do by virtue of it? State fully all of your transactions and all of Fenn's transactions under or in relation to this assignment.

Ans. It was made Dec. 30th, 1857. This assignment contains what is mentioned in Exhibit A attached to my answer in this suit. I believe it to be a general assignment of all his assets for the payment of his creditors. The first thing I done was to go to collecting the accounts and paying such debts as must be paid at the time—such as judgments, that were a lien on the property, and taxes and necessary expenses. I then went on

185 collecting and adjusting the claims as well as I could; I adjusted legal offsets to the amount of $5,450 97; that is to say, I had this amount allowed to Fenn on the claims against him, being amounts due him as offsets on those claims. I had in cash and bills receivable $5,999 35; included in this are the three bonds, Lacon City bonds, which I paid to John Southworth. This is what I have paid out up to the time of the commencement of this suit, with the exception of what I claim for doing the business and for expenses. I took counsel at the time of the commencement of the suit and he advised me to go on under the assignment until an injunction was served upon me. I went on and have acted under the assignment, collected and paid out more or less up to April 14th, 1863. I took the counsel of Judge Bangs, of Lacon. I received in money, up to the time of the commencement of the suit, $1,709 64 of the above amount, which I paid out in cash and bills receivable $5,999 35; there was $1,207 41 money which leaves cash in my hands at the time of the commencement of the suit $502 28. All the cash and bills receivable which I have paid out I have paid on the debts of the first class as mentionek in my answer. I have kept an account of all my transactions under the assignment, and I have vouchers for all I have paid out. Fenn has had nothing to do with it.

186 65 int. Why have you not collected more money on the accounts and other demands which were transferred to you by said assignment?

Ans. I have collected all that I could; many of the accounts were entirely worthless; nearly all the money I collected was on the accounts; I don't think I collected a hundred dollars besides what I collected on the accounts; I don't think the accounts were worth over 25 or 30 cents on a dollar besides the offsets. The accounts assigned to me amounted to somewhere from $14,000 to $15,000; the notes amounted to about $17,000. I have collected about $100 on the notes and consider that is all that can be got out of them; I have collected nearly all that can be collected out of the accounts. The railroad stock, $4,000, contained in the assignment is worthless. The real estate contained in the assignment is worth from $25,000 to $3,000; the three bonds I paid to Southworth at their par value, excepting the interest on Southworth's note. At the time the bonds were applied on that note it was known that the assignment would not pay the debts in the first class.

66 int. Why did you not sell the real estate and apply the proceeds under the assignment?

187 Ans. Because at that time real estate was very dull and could not make sales to advantage, and hoped by waiting a few months to get more than it could be sold for at that time.

67 int. Was all the property belonging to Fenn included in the said assignment to you?

Ans. According to my knowledge and belief it was.

68 int. Do you mean to say that Fenn had no property, claims, or demands of any kind, to your knowledge or belief, which was not included in that assignment?

Ans. I don't believe that he had property to the amount of $500, including household furniture, which was not included in the assignment.

69 int. Has any of the property, claims, or demands of any kind, contained in said assignment, or any part of the proceeds thereof, ever gone back into the hands of said Fenn since said assignment?

Ans. Not one dollar more of the property or proceeds from me to my knowledge,

70 int. Was all the property, or the evidences of its title, and all
188 the claims, demands, bonds, and everything mentioned in said assignment, delivered into your hands or possession at the time of the assignment?

Ans. It was, I think; he did not give me his deeds of the real estate in all cases.

71 int. Had Fenn collected any money within a short time previous to this assignment to your knowledge, information, or belief?

Ans. He had not to my knowledge, and nothing of any amount to my belief.

72 int. Had he any money in his possession at that time?

Ans. Not to my knowledge.

73 int. Within what time were the sales to Thompson and Green and the assignment to you made?

Ans. I should think it must have been within about twenty days.

74 int. How long previous to these sales and assignment have you know Fenn to make any sale of such magnitude?

Ans. About two years previous; it was a sale of a stock of goods
189 in a store; he exchanged them for real estate to the amount of about $24,000; I know of no others of such magnitude.

75 int. Does Fenn still reside at Lacon? and if not, where does he reside, and when did he leave Lacon?

Ans. He does not reside in Lacon. The last I knew anything about him he left this city (Chicago) as he stated on his way to California, either in November or December last. He left Lacon within a very few months after the assignment.

76 int. What property, money, or means of any kind did he have when he went to California, according to your knowledge, information, or belief?

Ans. I don't know that he had any money, but supposed he had enough to take him to California. I don't believe that he had to the amount of $500.

77 int. Did or not Green know at the time he bought the land of Fenn that Fenn's creditors were pressing him for payment, and that Fenn was on the eve of an assignment?

Ans. I do not know that he did know it, yet I may have known it at that time. I knew at that time that he was on the eve of an assignment. I didn't believe at that time that he could pay his debts.
190 I don't believe that his creditors were pressing him at that time to any great extent. They were some, I think.

78 int. What have you done under this assignment since the commence-

ment of this suit? How much money have you collected, and how much have you paid out since that time?

The further examination is postponed to to-morrow morning at ten of the clock.

J. T. MOULTON.

FRIDAY, *Mar.* 11, 1864.

Resumed the examination pursuant to adjournment.

Ans. I have exchanged bills receivable for bills payable in the first class to the amount of $533 44. I have exchanged one half of the 35 18-100 acres of land mentioned in the assignment for a claim in the first class of $2,496 13. I have exchanged the 240 acres of land in Iowa for a claim in the first class of $1,500. I have applied the undivided eleventh part of the real estate of Geo. Sparr, deceased, on claims in the first class to the amount of $629 85. I have received in cash for real estate sold $74; cash on account of bills receivable, $1,551 99. I have paid out for court fees in the case of Geo. Sparr, deceased, in regard to the real estate above mentioned, (said suit having been commenced before the assignment,) $55 68; expense for doing the business of the assignment, $218 78; taxes on real estate, $106 48; paid
191 counsel in this suit, $100; bills in first class, $693 09. Total so paid out in cash, $1,174 03, leaving in my hands before paying me anything for my services, $451 96. I have allowed offsets on bills payable to the amount of $96 41. The above is as accurate a statement as I can make, and I believe it to be correct.

79 int. State if you know whether Green expected to buy up the claims against Fenn at a large discount which he was to pay as the consideration for the land he purchased of Fenn.

Ans. I cannot recollect whether he ever said anything to me about it or not before the assignment. He may have said so to me. I know I talked with him soon after the assignment. He asked me what I thought he ought to pay for the indebtedness. I told him that if he could pay it at 25 cents on the dollar I thought he had better be buying it up.

80 int. Did not Green and Fenn expect and intend to buy up these claims at a heavy discount for the benefit of Fenn, or have they not so expressed themselves, one or both of them, in substance in your presence, or do you not believe that to have been the case?

Ans. They never have so expressed themselves so to me, and I do not believe that was the case.

192 81 int. State whether or not you refused to accept said assignment unless Fenn would pay you a bonus or extra pay for your services over and above the ordinary commissions, and whether Fenn did pay you said bonus or extra pay; and if so, what it was, how much, and when it was paid.

Ans. I refused to accept of the assignment without a bonus. He (Fenn) did pay me a bonus. It was three Marshall County bonds, of $1,000 each. They were paid just previous to the assignment. I find on consideration that I was mistaken in the number of bonds which Fenn received from Thompson for the stock of goods. I think now it was twenty, of a thousand dollars each. I now recollect that five of the Marshall County bonds were placed in the hands of Leonard Holland and myself to secure us against an imperfection in the title of some land that we had bought of Fenn. I should judge that the land was bought of Fenn from 4 to 6 months before this assignment. I should *I should* think the bonds were delivered to us after the sale of the stock goods to Thompson.

82 int. What became of the five bonds that were delivered to Leonard Holland and yourself, as you stated in your last answer?

Ans. The title to the land proved to be worthless, and we took the bonds in place of it.

193 82 int. What did you pay Fenn as the consideration for said land?

Ans. Forty-eight hundred dollars. It was a part of a stock of goods that we let Fenn have. Fenn was then trading in another store. He bought these goods of us in the store where we were trading, and then moved into the store we were trading in. This was the same store that he was trading in at the time of the sale to Thompson. The whole amount of our sale to him at that time was some $6,000 or $7,000. He paid us some cash, and gave a note for part. I think the note was for $1,000. Nothing has ever been paid on the note. At the time we took the land of Fenn he represented to us that he could make a good title to it. It turned out that he did not have a good title to the land; other parties held it.

82 int. What became of these bonds which were delivered to you as said bonus?

Ans. I have disposed of them for my own benefit.

The further examination is postponed to to-morrow afternoon, at 2½ of the clock.

J. T. MOULTON.

SATURDAY, *March* 12, 1864.

Resumed the examination pursuant to adjournment.

Cross-examined by Mr. Miller.

194 1 c. int. From all the knowledge which you have acquired upon the subject, what, in your judgement, was the cash value of the stock of goods sold by Fenn to Thompson at the time when the sale was made?

Ans. I should think they were worth from seventy to seventy-five cents on the dollar.

2 c. int. What proportion of the stock had been sold at the time you purchased the stock of Thompson? And describe the stock in respect to its character and value at the time you purchased it.

Ans. I should think that of the original stock purchased of Fenn, about one half had been for sold, but cannot state exactly, as Thompson purchased goods from time to time to replenish the stock with. There was a great many goods at the time I purchased the stock of Thompson that were out of style, and many of them more or less damaged, and the stock was not worth over seventy cents on the dollar.

3 c. int. When did the negotiations which resulted in your purchase of the stock first commence, and how did it commence?

Ans. It commenced a very few days before the purchase, and it
195 commenced by my asking him if he could trade it for real estate.

4 c. int. Had you ever intended or did you ever think of purchasing the stock before that time?

Ans. I never mentioned the subject to him prior to that time, but may have thought of it before; do not recollect as to that.

5 c. int. You say you paid for this stock by conveying a lot in Chicago. When did you purchase this lot, and what did you pay for it?

Ans. I purchased the lot, as near as I can recollect, about a year previous, and paid $20,000 00 cash, or its equivalent, and added about $2,000 00 in improvements before selling to Thompson.

6 c. int. What, in your opinion, was the cash value of this lot at the time you purchased this stock?

Ans. I considered the lot worth $20,000 00 in cash. But a very few days

before the sale I received a telegraphic dispatch from a real estate man in Chicago, asking me if I would take $20,000 00 for it.

7 c. int. What was the size of this lot, and where was it situated?

Ans. It was 150 feet front. I do not recollect the depth; I think it was over 200 feet. It was located on the south branch of the Chicago River, a
196 little south of Flint & Thompson's elevator, south of Twelfth street, on the east side of the river.

8 c. int. What, in your judgement, was the value of the land sold by Fenn to Wm. B. Green?

Ans. My opinion is that it could not have been sold for anything more than the incumbrance.

9 c. int. State whether the debts mentioned in the fourth class of the assignment were secured by real estate.

Ans. The most if not all of them were.

10 c. int. Will you explain your answer to int. 81? Explain fully why Mr. Fenn gave you the three Marshall County bonds, and why you declined to take the assignment unless you could be compensated for your services, as stated by you in your answer to the interrogatory referred to.

Ans. After looking into Mr. Fenn's business and seeing what would have to be done, I took legal counsel as to what my commission would be, and my counsel gave it as his opinion that it would be six per cent. on the money that passed through my hands in settling the business. I had ascertained that all claims and demands against Mr. Fenn to be settled, would
197 amount to over $100,000 00, and that in adjusting a large portion of them there would be no money passing through my hands but would have to be settled by offsets, &c., and that in all probability I would not receive over from five to eight thousand dollars in money in settling the whole estate, which would not pay me for the time I knew I would have to spend in settling the business; that is, that six per cent. on this amount of money would not pay me.

11 c. int. State whether, so far as you know, Fenn put into the assignment all of his property, except what was by law exempt from execution; and do you know, or have you any reason to believe that he had any property beyond what was exempt from execution, except what came into your hands as assignee?

Ans. So far as I know he put all his property into my hands that was not exempt, and I believe he put it all in.

12 c. int. Has any of the property which came into your hands as assignee been directly or indirectly given to Mr. Fenn, or in any manner, either directly or indirectly, refunded or used for his benefit or applied to any other purpose than those mentioned in the assignment? and state whether it was not contemplated either by Mr. Fenn or yourself that he should derive any benefit from this assignment.

198 Ans. It has not. I answer the question negatively in every respect.

13 c. int. What did you do when you were served with the summons in this case? and if you took any legal advice, whom did you consult, and what advice was given you, and how long did you act under such advice?

Ans. I took legal advice at first. I consulted Judge Bangs, of Lacon. He advised me to continue settling the business as before, until an injunction was served on me. I acted under his advice until April, 1862. I then counseled with Mr. Miller, since which I have paid out nothing; have done nothing but receive money that was offered me or him.

14 c. int. Have you disposed of the three bonds given you by Fenn, and how much have you realized for them?

Ans. I have sold two of them for $800 00 each. I exchanged one for real estate, which I considered worth from five to six hundred dollars.

15 c. int. Why did you dispose of those bonds that were given to you so low?

Ans. It was because the supervisors of Marshall County talked of repudiating, and it was all they would bring at the time.

199 16 c. int. Has the one thousand dollars which was owing to you by Fenn at the time this assignment was made, or any portion of it, been paid? and state in what class this debt was placed in the assignment.

Ans. It has not. It was placed in the first class.

17 c. int. State whether the lands you have conveyed since the commencement of this suit are still held by the creditors to whom you conveyed them. In payment of what debts were these lands given? In what class in the assignment were these debts placed? and if in the first class, did you procure the assent of the other creditors in that class before making the conveyances? and state also the value of the lands so conveyed by you.

Ans. The most of it I know does, and the Iowa lands I know nothing about since I conveyed it. In payment of debts of the first class they were given. I did obtain the consent of the other creditors before conveying. The piece of land that I exchanged for a claim of $2,496 13 was worth, in my judgement, about $700. The Iowa lands that I exchanged for the claim of $1,500 was worth, I should think, about four or five hundred dollars.

200 The George Sparr interest in real estate mentioned as having been applied on claims in the first class was worth about what we called it.

18 c. int. How much money has actually passed through your hands as assignee both before and since this suit was commenced, and how much, in your judgement, will pass through your hands if you shall go on and close up the assignment?

Ans. About $3,300 has passed through my hands, and I should think about $1,200 more may.

19 c. int. Have you received, either before or since the assignment, either directly or indirectly, anything for your time and services except the three bonds which Fenn gave you before the assignment?

Ans. I have not received one dollar, either directly or indirectly.

Adjourned.

TUESDAY, *March* 15, 1864.

Re-examination.

83 int. How much of the real estate contained in the assignment have you now left undisposed of?

Ans. I should judge from nine to ten hundred dollars' worth would be the cash value. About 17 acres of land and two, three, or four town lots

201 in Lacon. The 17 acres are just outside the limits of Lacon.

84 int. What is the whole balance of cash now in your hands which you have received under this assignment during the whole time you have acted under it?

Ans. I cannot state the exact amount over and above expenses and services—between 9 and 10 hundred dollars.

85 int. What amount of expenses are to come out of that amount?

Ans. I think the expenses previous to this suit; I should judge they would be from $300 to $500.

86 int. What amount is to come out for your services?

Ans. I suppose that will be for the court to decide.

87 int. What amount in value have you now in your hands contained in this assignment in everything except the real estate?

Ans. I should not consider it worth over from $200 to $300.

88 int. Have you paid any debts under the assignment except those mentioned in the first class in said assignment, and what amount of debts in that class still remain unpaid?

202 Ans. I have paid no other debts excepting by legal offsets; on all of these debts, excepting one due myself for $1,000, something has been paid. The amount unpaid is, I should think, from $4,000 to $5,000. On all the other debts excepting the first class there is, I should think, between $30,000 and $40,000 still unpaid.

89 int. In answer to int. 15, in cross-examination, as to why you disposed of the three bonds you received of Fenn so low, you state it was because the supervisor of Marshall County talked of repudiating, and it was all they would bring at the time. State now the value of those bonds at the time you received them, and state when you disposed of them.

Ans. They were considered worth between 60 and 70 cents on the dollar. I should think I disposed of them from six to twelve months after I received them.

90 int. What proportion of the bonds received by Fenn for the stock of goods were county and what proportion were city bonds?

I don't know.

91 int. What bonds were those which were included in the assignment?

Lacon City bonds. I understood Fenn received Lacon City and Marshall County bonds for the goods.

203 92 int. What was the value of the Lacon City bonds at the time Fenn received them, and how long were they worth that sum?

Ans. They were worth from 75 to 80 cents. They varied according to the value of money.

93 int. What is the debt of $1,000 which Fenn owes you and which is in the first class in said assignment?

Ans. It was for a portion of the goods which he purchased of Robbins & Holland.

E. V. ROBBINS.

204 On this day, to wit, the ninth day of May, A. D. 1864, in the record of the proceedings of said court in said entitled cause is the following entry, to wit:

JAMES MYERS, WILLIAM KINSLEY, *et al.*
vs.
WILLIAM FENN, ENOS V. ROBBINS, *et al.* } Chancery.

Now come the parties, by their solicitors, and thereupon this cause is set down for hearing on the bill, answers, replication, and proof on file, and after argument, the court takes said cause under advisement.

On this day, to wit, the fifth day of August, A. D. 1864, in the record of the proceedings of said court in said entitled cause is the following entry, to wit:

JAMES MYERS, WILLIAM KINSLEY, CHARLES STOUT, Henry C. Bowen, Wellington Clapp, William Kent, Samuel M. Beckley, Thomas B. Read, Absolom C. Jennings, Joel Read, William K. Hawley, and Richard C. Talbott,
vs.
WILLIAM FENN, ENOS V. ROBBINS, IMPLEADED WITH Samuel Thompson and William B. Green. } Chancery.

205 Now come the parties, by their respective attorneys, and the court having considered and being now sufficiently advised upon the matters heretofore submitted in the case, finds that the complainants are not entitled to the relief as prayed for, and dismisses the bill at the complainants' costs.

It is thereupon considered and adjudged by the court that the defendants William Fenn and Enos V. Robbins have and recover from the complainants

their costs by them about their defence in this behalf expended, amounting to the sum of dollars and cents, and that they have execution therefore. And thereupon the complainants, by their solicitor, pray an appeal to the Supreme Court.

206 On this day, to wit, the third day of December, A. D. 1864, in the record of proceedings of said court in said entitled cause is the following entry, to wit:

JAMES MYERS, WILLIAM KINSLEY, CHARLES STOUT, Henry C. Bowen, Wellington Clapp, William Kent, Samuel M. Beckley, Thomas B. Read, Absolom C. Jennings, Joel Read, William K. Hawley, and Richard C. Talbott,
vs
WILLIAM FENN, ENOS V. ROBBINS, IMPLEADED WITH Samuel Thompson and William B. Green. } Chancery.

Now come the complainants, by E. S. Smith, esq., their solicitor, and they having heretofore prayed an appeal to the Supreme Court, it is now ordered by the court that the same be granted, conditioned that they file a bond in the sum of five hundred dollars conditioned according to law, with security to be approved by the court.

207 On this day, to wit, the third day of December, A. D. 1864, came said complainants by their solicitors, and filed in said clerk's office their appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

Know all men by these presents that we, Ezekiel S. Smith and Theodore Newell, are held and firmly bound unto William Fenn, Enos V. Robbins, Samuel Thompson, and William B. Green, in the sum of five hundred dollars, to be paid to the said William Fenn, Enos V. Robbins, Samuel Thompson, and William B. Green, their executors and administrators, to the payment of which, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, administrators, firmly by these presents. Sealed with our seals and dated this 26th day of November, A. D. 1864.

Provided, however, that this obligation is upon this express condition, that whereas James Myers, William Kinsley, Charles Stout, Henry C. Bowen, Wellington Clapp, William M. Beckley, Thomas B. Read, Absolom C. Jennings, Joel Read, William K. Hawley, and Richard C. Talbott, have prayed an appeal to the Supreme Court of the United States to reverse a decree rendered by the circuit court of the United States for the eighth circuit
208 and northern district of Illinois, in a certain cause on the chancery side of said circuit court, wherein James Myers, William Kinsley, Charles Stout, Henry C. Bowen, Wellington Clapp, William M. Beckley, Thomas B. Read, Absolom C. Jennings, Joel Read, William K. Hawley, and Richard C. Talbott are complainants, and said William Fenn, Enos V. Robbins, Samuel Thompson, and William B. Green are defendants, in favor of said defendants:

Now, therefore, the condition of this obligation is such that if the above-named complainants shall prosecute their said appeal and writ of error to effect, and shall pay all costs if they shall fail to make good their said plea, then this obligation to be void; otherwise, to remain in full force and virtue.

E. S. SMITH. [SEAL.]
T. NEWELL. [SEAL]

Approved, A. D. 1864. THOMAS DRUMMOND.

Endorsed Filed Dec. 3d, 1864. WM. H. BRADLEY, *Clerk.*

On this day, to wit, the fifth day of December, A. D. 1864, came said parties by their solicitors, and filed in said clerk's office their stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

209 In the circuit court of the United States, northern district of Illinois.

JAMES MYERS, WILLIAM KINSLEY, CHARLES STOUT, *et al.*
vs.
WILLIAM FENN, ENOS V. ROBBINS, SAMUEL THOMPSON, William R. Green.
} Chancery. Appeal to the Supreme Court United States.

It is hereby stipulated and agreed that the record from said circuit court in the above-entitled cause may be filed in the Supreme Court of the United States, at the December term thereof, A. D. 1864, at any time on or before the first Monday of January, A. D. 1865, with the same force and effect as though filed within the first six days of said December term, under the rule of said Supreme Court, and that this stipulation may be incorporated into and made part of the record in said cause.

Dated Chicago, Dec. 5th, 1864.

HOYNE, MILLER & LEWIS,
For Defendants.

Endorsed: Filed Dec. 5th, 1864.

WM. H. BRADLEY, *Clerk.*

210 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States within and for said northern district of Illinois, do hereby certify that the accompanying and foregoing transcript from pages one to two hundred and nine, inclusive, contains a true, full, and perfect copy from the record of all the proceedings which have been had in said court in said cause, in chancery, of James Myers, William Kinsley, Charles Stout, *et al.*, complainants, against William Fenn, Enos P. Robbins, Samuel Thompson, and William B. Green, defendants, as the original of the same now remain in my custody, together with the citations sued out by the said appellants to the said defendants.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said northern district, this seventeenth day of December, A. D. 1864.

[SEAL.] WILLIAM H. BRADLEY, *Clerk.*

211 Supreme court of the United States of America, of the December term, A. D. 1864.

JAMES MYERS, WILLIAM KINSLEY, CHARLES STOUT, Henry C. Bowen, Wellington Clapp, William M. Beckley, Thomas B. Read, Absolom E. Jennings, Joel Read, William K. Hawley, and Richard C. Talbott,
vs.
WILLIAM FENN, ENOS V. ROBBINS, SAMUEL THOMPSON, and William R. Green.
} Error to the circuit court of the United States for the northern district of Illinois.

Assignment of errors.

I. The court erred in vacating the final decree, entered in March, 1862, in favor of the complainants below.

II. The court erred in not granting a decree in favor of the appellants, setting aside the sale from Fenn to Green and the assignment from Fenn to Robinson.

III. The court erred in not granting a decree in favor of the appellants, directing the defendants Fenn and Robbins to assign and transfer to a receiver the bonds transferred by Fenn to Robbins on the eve of the assignment.

IV. The court erred in not granting a decree in favor of the ap-
212 pellants.

V. The court erred in granting a decree dismissing the bill.

And the said plaintiffs in error pray that the decree aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and for naught held, and that they may be restored to all things which they have lost by occasion of said decree.

E. S. SMITH,
Attorney for the plaintiffs in error.

Filed December 30, 1864.

IN THE

SUPREME COURT

—OF THE—

UNITED STATES.

DECEMBER TERM, 1866.

No. 146.

JAMES MYERS et al., APPELLANTS.

vs.

WILLIAM FENN et al., APPELLEES.

Appeal in Chancery.

Appeal from the Circuit Court of the U. S. for the Northern Dist. of Ill.

E. S. SMITH, for Appellants.

CHICAGO, 1867:
BEACH & BARNARD, STEAM PRINTERS,
122 & 124 S. Clark St.

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HISTORY OF THE CASE.

William Fenn was, and had been for many years, a merchant, doing business at Lacon, Marshall county, Illinois.

December 10, 1857, Mr. Fenn, being in failing circumstances, made a sale of his stock in trade, for $18,000, to Samuel Thompson, one of the defendants, taking in payment the bonds of Lacon City and Marshall county.

A few days after this sale, said Fenn made a sale of a large quantity of lands to William B. Green, taking his note for some fifteen thousand dollars, to be paid in the paper against Fenn, giving Green an opportunity to purchase the paper for a few cents on the dollar.

After this, and very soon, if not on the same day, Mr. Fenn makes an assignment to Enos V. Robbins, one of the defendants, purporting to be a general assignment for the benefit of his creditors.

Mr. Fenn did not assign all his property, but gave to the assignee three thousand dollars of bonds, as now claimed, as a bonus, or extra pay, for accepting the trust. This amount was withheld from the assignment, besides some other property, as shown by the answer of Mr. Fenn.

These complainants brought suit, soon after, against Mr. Fenn, and at the May term, 1858, Myers and others, of the firm of Myers, Kinsley & Co., recovered judgment for $1,142.39, and took execution, and same was returned wholly unsatisfied.

July 31, 1858, Myers, Kinsley & Co. filed their bill in this court, to reach the property of the defendant, making Fenn, Thompson, Green and Robbins defendants, who were all served, and appeared in the court.

The bill stated all the facts, and charged that the sale of the goods to Thompson, the sale of the lands to Green, and the assignment to to Robbins, all fraudulent and void. The several averments were full as usual in cases of creditors' bills—to which the defendant answered on oath, as required by the bill.

ANSWER OF WM. FENN.

The answer of Mr. Fenn admits the judgment, and the issuing of execution and return unsatisfied, and the amount due. He admits the sale to Thompson, Dec. 10th, 1857, for the sum of $18,000 in bonds, as stated, and that he was in debt and in failing circumstances, and that Thompson may have known it, and probably did, &c. (P. of record, 12; fol. 33.)

The answer of Mr. Fenn, also admits the sale of the land to Green, Dec. 30th, 1857, and the assignment to the defendant, Robbins, Dec. 30th, 1857, and states that he had assigned all his property, except as after stated, for the benefit of his creditors. (P. 13 ol. 34.)

The answer sets out the contract of sale of the lands to Green fols. 36, 37, 38)—that the contract was $15,000, above all incumfrances, to be paid in nine months in the paper of defendant Fenn; that Green purchased, subject to incumbrances, and agreed to pay them off. The answer of Mr. Fenn admits that he was in failing circumstances, and that his creditors were pressing him; and that Green knew the facts, as he supposed. (Fol. 39, p. 14.) He denies that the sale was made to defraud his creditors—(fol. 40).

The answer of said Fenn admits that said Green did expect to purchase his paper at a discount (fol. 40); and, also, admits that he had an interest in some property not mentioned in the assignment—an interest in a house and lot, about $300—also, an interest in certain real estate in Marshall county, and in Henderson county, Illinois—also, an interest with Ganbert in lands in Iowa, and also an interest in stock of the Peoria Marine & Fire Insurance Company, and some household furniture—(see record, p. 15, fol. 41); and some other property—(fol. 43).

The answer of said Fenn admits that he gave to said Robbins, before the assignment was made, as a bonus, or extra consideration, upon which, and only which, said Robbins would accept the trust—(fol. 46). The quantity of land sold to said Green was upwards of forty-seven hundred acres—(fol. 47).

ANSWER OF E. V. ROBBINS.

The answer of defendant Robbins, admits the judgment, execution and return unsatisfied, and that the judgment was unpaid (pp. 18–19; that Fenn sold his stock of goods to Thompson, and took Lacon city and Marshall county bonds; and at the time said Fenn was greatly in debt, and in failing circumstances, and presumes that Thompson had heard of reports to that effect—(p. 20, fol. 44).

The answer admits that Fenn did make a general assignment to him, Dec. 30, 1857, and was in failing circumstances; which assignment was recorded in the recorder's office for Marshall county. He denies having any property or effects belonging to Fenn (fol. 58); that he admits he accepted of the trust, and had gone on and done what he could, &c. (fol. 59.)

The answer admits that he arranged, adjusted, received and settled offsets against accounts, to the amount of $5,450.97; that he paid in bills receivable, and in bonds, $4,791.94; that he collected $1,709.64; paid expenses, under the assignment, $503.60; paid taxes, $386.84, and to Mrs. Gibson $5,00; and to others, $277.37—leaving in his hands $502.28.

The answer of Robbins admits that Mr. Green knew, or suspected Fenn to be in failing circumstances, at the time he purchased the land—(fol. 61); that Greeen expected to be able to purchase Fenn's paper at a discount—for, as a matter of fact, the obligations of Fenn, at the time of the sale, could be purchased at a great discount—(fol. 61).

The answer of said Robbins no where states the fact of the three bonds, of one thousand dollars each, which Fenn gave him, as a bonus, or extra pay, for accepting the trust.

The assignment is given as

EXHIBIT A (p. 23).

The assignment contains the following :

"Shall, with all convenient diligence, sell and dispose of the "same, at public or private sale, as he may deem most beneficial "to the creditors of the said party of the first part," &c. (fol. 66.)

CLASS No. 1.

The assignment directed the payment of debts of the firm of Fenn, Perry & Dodds, and a judgment against the firm, in favor of Robbins & Holland, to a large amount—(see p. 40). These were company debts. The assignment was Fenn's alone.

CLASS No. 4.

The assignment directed the payment of a debt, assumed to be paid by Green—an incumbrance upon the land conveyed to him, and taken subject to incumbrances—(p. 43).

ANSWER OF SAMUEL THOMPSON.

The answer of defendant Thompson, admits the judgment, execution and return unsatisfied, as stated in the bill—(p. 44, fol. 111). He admits the sale to him of the goods, by Fenn, on Dec. 10, 1857, for $18,639.96—and paid him nine Lacon City bonds, of $1,000 each, and eleven Marshall county bonds, of $1,000 each.

The answer of Thompson admits that he knew, at the time of the sale, that Fenn was considerably in debt, but, at that time, supposed all indebtedness, which was likely to be troublesome to said Fenn, were joint indebtedness with one Theodore Perry and Joseph L. Dodds, who, about that time, failed in business—(p. 45, fol. 115). He avers that the purchase was made in good faith, &c., and for his benefit, and not for the benefit of any other person whomsoever—(fol. 115). Denies all fraud, &c. Answer filed Dec. 28th, 1858.

ANSWER OF W. D. GREEN.

The answer of said Green states that he supposes that it is true that the complainants recovered judgment, execution and return, as stated in the bill—(p. 48, fol. 122).

The answer admits that Mr. Fenn, on the 15th day of Dec. 1857, conveyed to him certain real estate; that, at the time Fenn conveyed the goods to Thompson, he (Green) suspected and believed that Fenn was embarrassed, and indebted to a large amount, and was in failing circumstances.

The answer of Green admits, that Fenn held the title to 4,900 acres of land in the county of Vermillion, and that there were trust deeds on said land, to the amount of $32,000; that he agreed to purchase $15,000 of the paper of said Fenn, and that Fenn was to receive it at par; and that he knew that said Fenn was, at the time, in failing circumstances; that he was greatly in debt, &c., and could be forced to assign for the benefit of his creditors, and that said Fenn would prefer creditors; and that there would be a large portion of creditors who would not receive any dividend, and could purchase the paper of said Fenn at a mere nominal sum, not exceeding five cents on the dollar; that he held, at the time of making the answer, $500—(fol. 129); that he gave his note to Fenn for $15,000, payable in the paper of Fenn. The answer was sworn to, Sept. 18th, 1858, and filed Dec. 28th, 1858. Replications filed Dec. 28th, 1858.

Answers all filed Dec. 28, 1858.

Petitions filed by other Judgment Creditors, to become Parties Complainants.

Oct. 22, 1858, Bowen, McNamara & Co., filed petition to become complainants, setting out a judgment in the same court, against the said defendant Fenn, recovered at the July term of said court, 1858; that execution issued Sept. 28, 1858, to the marshal of the district, and returned unsatisfied. Judgment for $3,260,96.

The petition of Clapp, Kent & Beckley being joined with Bowfor and others, set up judgment, execution, and return unsatisfied, en $1,322,22.

The petition of Jennings, Read & Co., being also joined, set up judgment for $3,916,75, and that execution issued and returned unsatisfied. Said petition set forth all the facts necessary to allow them to come in as complainants, and be paid from the proceeds of the property next to the original complainants, according to the practice of the court. Upon filing the petition, a notification was issued by the clerk of the court which was served upon the defendants, Oct. 28, 1858. (See Record 52, 53, 54, 55.) These petitions were filed and notification served on defendants some two months prior to the filing of their answers (page 55).

March 17, 1862, a decree was entered in favor of all the complainants, each firm separate, for the amount of its judgment. A receiver was appointed and the assignment set aside and held void, the bill being dismissed as to Green & Thompson. (Pages 57–8.)

April 4, 1862. The defendants, by counsel, moved to set aside the decree. The argument of said motion was postponed by stipulation. (Page 59.)

Feb. 6, 1863, the court granted leave for complainants to file petition. (Fol. 154.)

March 2, 1863. Decree set aside and complainants filed petition to set aside dismissal of the bill as to Green & Thompson. (Page 60, 61.)

March 10, 1863, a subpœna was issued and served upon Green. Thompson not found.

Dec. 9, 1863. The application to vacate the order of dismissal, as to Green & Thompson, was overruled. (Fol. 164.)

Testimony of E. V. Robbins, (pp. 63 to 76.)

The first material testimony given by Mr. Robbins, most of it being immaterial to the issue, will be found fol. 173. He says:

"I think the bonds were taken at par, and my opinion, from "what sales I know of about that time, is, that the county bonds "were worth about seventy cents on the dollar, and the Lacon "city bonds worth about eighty cents on the dollar (fol. 173). * * "I know that he sold some real estate to Wm. B. Green. I know "that he sold it. I think it was about 5,000 acres of land in Ver- "million county, about the 15th of December. He sold it subject "to incumbrance of about $28,000; took Wm. B. Green's note, "payable in Wm. Fenn's paper, for $15,000, within nine months, "and Wm. B. Green gave him a written obligation to take up all "Fenn's liabilities on the land, amounting to about $28,000. "(Fol. 176, page 67.) * * The note was assigned to me, that "is, put in the assignment. * * I refused to accept of the "assignment without a bonus. Fenn paid me a bonus. It was "three Marshall county bonds, of $1,000 each. They were paid "just previous to the assignment. (Fol. 192, page 72.) * * I "now recollect that five of the Marshall county bonds were placed "in the hands of Leonard Holland and myself, to secure us against "an imperfection in the title of some land that we had bought of "Fenn." (Fol. 192.

Decree in the Court below.

August 5, 1864. On hearing the cause, the court dismissed the bill, with costs, against the complainants. Appeal prayed and granted, all the complainants appealing and filed assignment of errors, Dec. 30, 1864.

ERRORS ASSIGNED.

I.

The court erred in vacating the final decree entered in March, 1862, in favor of the complainants below.

II.

The court erred in not granting a decree in favor of the appellants, setting aside the sale from Fenn to Green, and the assignment from Fenn to Robinson.

III.

The court erred in not granting a decree in favor of the appellants, directing the defendants Fenn and Robinson to assign and transfer to a receiver, the bonds transferred by Fenn to Robinson, on the eve of the assignment.

IV.

The court erred in not granting a decree in favor of the appellants.

V.

The court erred in granting a decree dismissing the bill.

May it please the Court:

Having given a history of this case, and a statement of the points shown by the record, we do not consider it necessary to take much time in presenting the law, as we understand it, governing the facts shown by the record. Certain facts, we think, are most clearly shown in the record, which must be decisive in the case, to give the complainants some relief asked, if not all, prayed for in the bill.

1st. We claim that the decree entered in March, 1862, was properly granted, and ought to have stood. In fact, the complainants were, in our opinion, upon the record, then entitled to a decree for all they asked in their bill. The sales to Green and Thompson should have both been set aside. The answer of Thompson admits full knowledge of Fenn's failing circumstances, and large indebtedness. There can be no doubt of that. Thompson

also knew that Fenn had been for years, and was then, a retail merchant. They both resided in the same place. Thompson being a merchant, as shown by the testimony of Robbins, he knew full well, that wholesale dealers in selling goods to a retail merchant, it was the universal understanding that the credit was given upon the business capacity of the purchaser to follow the line of business transacting, when the goods were purchased. No debtor has the right, after purchasing his stock upon credit, and after the time arrives for the payment, or a portion of the payment thereof, to make a sale of his entire stock, on long time of payment, or for paper of doubtful value. These bonds were what are called railroad bonds, and Robbins says (page 75, fol. 198): that Marshall county talked of repudiating. When a man is in debt, and cannot pay, his creditors are entitled to have his property sold to pay their debts.

In *Nicholson* v. *Leavett*, 6 Selden, 595, the court says: "When "a debtor becomes insolvent, his property belongs, in equity and "justice, to his creditors, and not to him, and therefore the object "and aim of the law is to give it to his creditors."

In the same case above cited, on page 517, Justice GARDNER says: "But the debtor cannot, in that way (meaning assign- "ment), avoid the obligation of immediate payment, or extend "the period of credit, without the assent of the creditor."

"To attempt to do this, however plausible may be the pretence, "is, in conscience and in law, a fraud and nothing else."

We submit, if the court please, that this principle is clear beyond question, and sanctioned by reason and authority. Let us apply the principle to the sale to Thompson, and we will find it fraudulent and void. Mr. Fenn was largely in debt for the very goods Thompson was seeking to get possession of, for bonds, not at par, but at a great discount, and perhaps nearly worthless. No market value for the bonds. The credit was for bonds having years to *run*, and not half so valuable as good promissory notes, on twelve

months' time. The sale, we say, was fraudulent and void as to these creditors, and if that be so, the sale to Green was void, and the assignment to Robbins also void. The assignment was the last and closing act of the fraud first began with Thompson. All had notice as shown by the answers.

The decree in March should not have been set aside, unless the defendants had all been reinstated in court, so that the complainants could have been placed where they were before decree. The stipulation, dismissing the bill as to Green and Thompson, was a part of the understanding; but my clerk, who attended to the case, did not state so in the stipulation, as it was then supposed the decree would stand, therefore the defendant had the advantage on the decree being set aside, and took good care to hold such advantage. It is not known upon what grounds the court gave the decree. It is said that the first opinion was, that the assignment was void *per se*. We think that if the assignment is not void upon its face, the answers and the proofs clearly show it fraudulent and void.

Can the Second Decree Stand?

If the court please, we will try to show that the decree should be set aside, and here we will say, that as Thompson was not served with process after the decree of March, 1862, was set aside, we shall only present the facts tending, as we think, to show the assignment void; and in doing so, we shall consider the fact of the sale of the goods to Thompson, as one, with others, to show the assignment fraudulent and void. It is, we think, competent to consider the facts connected with the sale as tending to show the intent of Mr. Fenn, in making the assignment to Robbins.

The sale to Thompson, no doubt, was made by Fenn so that he could have control, to some extent, of the proceeds. It would have been much easier for him to use and convert bonds to his own use than goods. If he did not have an unlawful purpose, why not assign the goods to pay the creditors from whom he purchased

them? The sale was clearly fraudulent, for the reason that he had no right to make a sale of his entire stock to postpone the time of credit, or place his property beyond the reach of the ordinary process of law. The sale being void, the assignment, its offspring, certainly is void also. In all cases of general assignment, for the benefit of creditors, it is the duty of debtors to include all their property and effects. If any property is reserved, it renders the assignment void.

Grover v. *Wakeman*, 11 Wendell, 187.
Goodrich v. *Downs*, 6 Hill, 438.
Doremus v. *Jones*, 8 Barbour 124.
Burdet v. *Post*, 12 Barbour 168.
Barney v. *Griffin*, 2 Comstock, 365.
Pierson v. *Manning*,, 2 Gibbs, 448.
Smith v. *Mitchell*, 12 Mich. 180.

These cases all hold, that a debtor must include all his property in a general assignment, or it will be fraudulent and void.

In the case of *Pierson* v. *Manning*, on page 448, the court says: "Great and well founded doubts have always been entertained by "courts generally in this country, in relation to sustaining volun- "tary assignments by insolvent debtors at all, which give a prefer- "ence to the claim of one creditor over another, and such trans- "fers of property, by debtors in failing circumstances, have only "been sanctioned by courts in most of the states where the sur- "render and transfer is, in fact, entirely *unconditional*." On page 460, the court says: "That when an assignment is fraudulent as "to any of its provisions, it is void *in toto*, as against creditors "who are entitled by law to take advantage of the fraud."

Smith v. *Mitchell*, on page 191. The court held that the circuit court erred in not charging that the assignment was void if it did not fairly, *bona fide*, assign all of the assignors' property liable for the payment of their debts.

In *Goodrich* v. *Downs*, 6 Hill 439, the court says that such transfers (meaning assignments giving preferences,) have only been allowed to stand when the debtor makes an unconditional surrender of his effects for the benefit of those to whom they rightfully belong.

The other cases cited sustains the same doctrine.

The general denial of fraud cannot make evidence in favor of the defendants, when the facts stated clearly show fraud.

A general denial of fraud amounts to nothing, when the facts are shown from which the court is compelled to infer a fraud.

It most clearly appears from Mr. Fenn's answer, that he did no include all his property in the assignment. The court is only to refer to page 15, fol. 42, and find the statement of Fenn as to the property not included in the assignment. No excuse is given for withholding the property, and besides that, Mr. Fenn states that he gave to Robbins $3,000 of the bonds as a bonus, or extra pay. (Page 17, fol. 46.)

Robbins states the same in his testimony, page 72, fol. 192. Here we find a direct withholding of $3,000, and making a pledge or gift, as a bonus for accepting of an assignment, when in fact Robbins was one of the preferred creditors to the amount of $1000, besides one-half owner in five bonds of $1,000 each, with Holland This we submit voids the assignment.

A debtor cannot fix compensation for an assignee, much less can he pay a large sum in advance for labor to be performed. If the debtor could do this, he might as well give to the assignee discretionary power which he could exercise against the will of the creditors.

It has been held that an assignment was void when it fixed the compensation to be paid to an attorney for services to be rendered.

Neckles v. *McElwen*, 17 N. Y. 22.

Mead v. *Phillips*, 1 Sand. Ch. 83.

The case of *Nichols* v. *McEwen*, 17 N. Y., page 22, we think, fully sustains our position upon this point. In that case the assignment provided for the payment of a counsel fee to the assignee, who was a lawyer, over and above the expenses of the commission for executing the trust. The assignment was held void for that provision. Apply the principle to the case under consideration, and it will be found that the giving of $3,000 bonds to Robbins as a bonus or extra pay, is a direct fraud upon the creditors. In the case cited, the provision was made upon the face of the assignment, open for the creditors to know what the provision was. In this case nothing appears until the parties were compelled to answer and testify. We submit, that the withholding of property, and the giving of the bonds to Robbins, most clearly vitiates the assignment, and for that reason the court below should have given the complainants a decree setting aside the assignment.

But we say, if the court please, that there is no reason whatever why a decree for the $3,000 of bonds, and the property withheld from the assignment, should not have been given to the complainants. The proofs most clearly showed sufficient for a decree to that extent. It is impossible to say why a decree was not entered for the complainants. We are to this day without information as to the grounds of the decree. Counsel for the appellees claimed, in the court below, that the bonds so given to Robbins could only be reached by a bill by the creditors to enforce the assignment, and compel the assignee to account for the bonds to be applied according to the trust. If such a position be taken to sustain the decree in this case, then, we submit, that such a position is an absurdity, and requires no argument to refute it.

As to want of Jurisdiction.

Counsel for the appellees take very extraordinary positions, respecting the appeal. He says that the appeal, as to Myers, Kinsley & Stout, must be dismissed, because the judgment is less than $2,000, the judgment being only $1,152.39, that being the amount in controversy, and cases are cited which we think do not apply in this case.

The authorities cited are all in admiralty, and of course were original suits in the court from which appeal was taken. While several may join in such proceedings, it in no way charges the contract.

In case of a creditor's bill, like the one under consideration, the proceeding is not an original one; such a suit is in aid of a judgment at law, and for whatever amount a judgment may be rendered in the circuit court it is competent to file a bill on the equity side of the court, to enforce such judgment, and if the bill is dismissed, an appeal will lie, for the reason that it is not an original suit.

We think the amount in controversy is the value of the property to be reached, and not the amount of money to be made. It is the amount and value of the property sought to be reached by the decree. But we need not take time upon this point, as all the creditors were complainants at the time the answers were filed, and the testimony taken, and cause tried, the judgments amounting to about ten thousand dollars.

The decree could have been entered against Fenn for the total amount of all the judgments, and the property sold to pay the amount, and then applied by the court to each creditor, *pro rata*. The clerk could divide the money realized, or the court could order the payment to be made according to the liens.

All the complainants did appeal, and the case was so treated by appellee's counsel. The enforcement of the payment by decree need not necessarily be severed, as in cases in admiralty. In creditors' bills, the property sought to be reached is the value in controversy.

The act of Congress—sec. 2, ch. 40, 2 Stat. at large, p. 244—allows appeals in equity, when the matter in dispute shall exceed the *sum or value* of two thousand dollars. The judgment is not the amount, as that is not in dispute, it having been fixed by the

ourt at law; therefore, the value of the property is the sum in controversy. A decree, in cases of this kind, need not state the amount to be paid.

The prayer in the bill, is to apply the property, fraudulently disposed of, to pay the sums fixed by the judgments.

Freeman v. *Howe*, 24 Howard, p. 460, is decisive in this case. It was there held, that a bill filed on the equity side of the court, to restrain or regulate judgments, or suits at law, in the same court, and thereby prevent any injustice or inequitable advantage, under mesne or final process, is not an original suit, but ancillory and dependent, supplementary merely to the original suit, out of which it had arisen.

The bill, in this case, was not filed as an original suit, but to aid the judgment at law; and each firm, having obtained judgment, could join, or could come in as complainants, any time before decree, and participate in proceeds.

The judgments having been rendered, are not like contracts, each to be passed upon and settled, as in cases in admiralty, according to the cases referred to by counsel for the appellees.

We submit, if the court please, that there can be nothing in the objection as to the jurisdiction in this case. The defendants having joined in error, therefore it is too late to make the objection on the hearing. Counsel objects to that part of the bill, or rather the judgments, of the parties who came in on the petition, for the reason the judgments were not proved. The record shows the amount of judgments and executions, and the parties served with process; and, as we understand the facts, the judgments were not disputed, and the whole case was heard, upon the records or judgments, as well as the bill, petition, answers and proof. Such is the usual practice in such cases. The decree need not have been for the payment of the judgments. It would have been sufficient to have decreed the sale and assignment void, and ordering a sale of the property by a receiver, and paying the money into court; and upon that being done, the court then making an order dividing the money, according to the order of lien.

The answers admitted the judgments of Myers, Kinsley & Co.' and stood for answering, upon the hearing, as the case was then made—all the judgment creditors being complainants. The answers of none of the defendants deny any of the judgments; and they are not denied, or questioned, in any of the pleadings, or anywhere in the case. Can they deny them now?

Counsel also say, that the complainants should have shown that the debts existed at the time of the assignment. We think that the record does show that the debts all existed, long prior to the assignment. The judgment record shows the date of the contracts, sued upon, to be prior. The assignment, in schedule "A," shows that the debts existed at the time. So, we think their own proofs fully show the fact, which counsel say did not exist—(class 2, p. 10).

The assignment was a part of the answer of Mr. Robbins—p. 28).

We submit, if the court please, that we have shown sufficient to be entitled to a judgment reversing the decree, and that we are entitled to a decree setting aside the assignment.

Respectfully submitted,

H. S. WHITE,
Attorney for Appellants.

Supreme Court of the United States.

December Term, 1866.

James Myers, William Kinsley, Charles Stout, Henry C. Bowen, Wellington Clapp, William M. Beckley, Thomas B. Read, Absolem C. Jennings, Joel Read, William R. Hawley, and Richard C. Talbott, *Appellants.*

vs.

William Fenn, Enos V. Robbins, impleaded with Samuel Thompson and William B. Green, *Appellees.*

BRIEF FOR APPELLEES,

By JOHN VAN ARMAN.

Supreme Court of the United States.

December Term, 1866.

James Myers, William Kinsley, Charles Stout, Henry C. Bowen, Wellington Clapp, William M. Beckley, Thomas B. Read, Absolem C. Jennings, Joel Read, William R. Hawley, and Richard C. Talbott, ***Appellants.***

vs.

William Fenn, Enos V. Robbins, impleaded with Samuel Thompson and William B. Green, ***Appellees.***

BRIEF FOR APPELLEES.

On the 31st July, 1858, three of the appellants—James Myers, William Kinsley, and Charles Stout—filed a creditors' bill in the Circuit Court for the Northern District of Illinois, against William Fenn, Enos V. Robbins, Samuel Thompson and William B. Green, to reach property to satisfy a judgment for $1,153.39, which the complainants had recovered against the defendant William Fenn, in said court at its May term, in 1858. It was alleged in the bill of complaint, that a sale of a stock of goods, made by the defendant Fenn, to the defendant Thompson, Dec. 10, 1857—an assignment, made by Fenn to Robbins, on the 30th of Dec., 1857, and a sale of real estate, made by Fenn to defendant Green, "*about the time or times of the said sale and the said assignment*"—were each made to hinder, delay, or defraud creditors of Fenn, and were consequently void.

On the 22d of Oct., 1858, the petition of Henry C. Bowen, Wellington Clapp, William Kent, William M. Beckley, Thomas B. Read, Absolem C. Jennings, Joel Read, William R. Hawley and Richard C. Talbott, was filed in the case, setting forth the recovery of a judgment against Fenn, in favor of Henry C. Bowen, in the July term of the Circuit Court, A. D. 1858, for $3,260.96; and the recovery of a judgment in favor of Clapp, Kent and Beckley, at the same time, for $1,322.22; and the recovery of a judgment, at the same time, in favor of the last five petitioners, for $3,916.75; that executions were issued, in the first and second judgments, Sept. 28, 1858, and returned *nulla bona*, Oct. 19, 1858; and that execution was issued on the third judgment, Oct. 2, and returned *nulla bona*, Oct. 19, 1858. After stating that no part of the judgments had been paid, the petition concludes with a prayer that the petitioners may be made party complainants to the bill filed by Myers, Kinsley and Stout, and that they may be entitled to the benefit of any decree which may be rendered in that suit.

On the 28th of December, A. D. 1858, the separate and sworn answers to the bill of complaint, were filed for each of the defendants. On the same day, the 28th December, 1858, and the 25th of January, 1859, general replications to their answers were filed. Shortly prior to the 7th of March, 1862, the cause was heard upon the pleadings; the counsel for the complainants contending that the assignment to Robbins, by reason of the clause directing the assignee to sell "at public or private sale, &c.," was fraudulent. And, on the 7th of March, a decree was entered, setting aside the assignment to Robbins, as fraudulent; appointing a receiver of the assigned property, and directing the receiver, out of the proceeds, to pay the claim of Myers, Kinsley and Stout in full, and out

of the balance of the proceeds, to pay the claims of the petitioners *pro rata*.

At the same March term of the court, a motion was made by defendants' solicitor, for a re-hearing of the cause; that the decree already made, be set aside; and, that a decree be entered in favor of the defendants, and against the complainants. This motion was partially heard, and its further hearing continued, under a stipulation, to the 2d of March, 1863, when the motion was granted, and an order entered, vacating the decree above mentioned.

On the 5th of April, 1862, the complainants dismissed the bill, as to defendants Thompson and Green.

The reason why the motion, for a re-hearing of the case, remained so long undecided, was, when the motion was made the Supreme Court of Illinois had, in a then recent case, decided that the clause objected to did not vitiate an assignment for the benefit of creditors. That case stood upon an application for a re-hearing; and Judge Drummond, desiring that the law should be uniform in Illinois upon that question, deferred the decision of the motion until the final determination of the case in the Supreme Court of that State.

On the 9th of December, 1863, the complainant examined, as a witness, the defendant E. V. Robbins. His testimony is stated on pages 63—76, of the printed record.

On the 9th of May, 1864, the case was heard upon the pleadings and testimony of Robbins, and taken under advisement. On the 5th of August, in the same year, the court dismissed the bill, at complainants' cost; and from this decree, the complainants appealed.

1. The appeal, so far as respects James Myers, William Kinsley and Charles Stout, the complainants in the bill of complaint, must be dismissed, for the reason, that the amount in controversy, as between these parties and the appellees, is less than two thousand dollars, and therefore not within the jurisdiction of this court: The judgment recovered by them, against Fenn, being only $1,152.39. When parties, having separate and distinct claims, unite in one suit or proceeding, the matter in dispute is several with respect to each claimant, and those only can prosecute an appeal whose claims exceed the sum of two thousand dollars.

Oliver v. *Alexander*, 6 Peters, 143.
Rich v. *Lamberts*, 12 How., 347.
Clifton v. *Sheldon*, 23 How., 481.

2. The appeal being dismissed in respect to the complainants in the bill of complainant, it cannot be prosecuted by the remaining appellants, the petitioners in the court below, for the reason that it does not appear in the record that they ever became parties in that suit.

A paper was filed in the suit, which is set forth on pages 52, 53 and 54 of the printed record, signed by these parties, in which they ask "to be made parties complainant to the "bill, and that they may be entitled to the benefit of any "decree which may be entered therein, and for such other "and further rule or order in the premises as may be agree-"able to equity;" but no disposition whatever was made of this petition; no order was made by the court making them parties; nor were the defendants required to answer the petition. These parties, therefore, never placed themselves in a position in the court below, to obtain any relief in that suit. The bill in that suit having been dismissed—and the com-

plainants in that bill, by reason of the amount of their claim not being in a situation to prosecute an appeal—these parties cannot complain.

3. Even if they can prosecute an appeal from the decree dismissing that suit, they can only avail themselves of errors committed in respect to their own several claims.

In the petition, it is alleged that the amount of the judgment in favor of Henry C. Bowen, was -	$3,260.96
That the amount of the judgment in favor of Clapp, Kent & Beckley, was -	1,322.22
And that the amount of the judgment in favor of Read, Jennings, Read, Hawley and Talbott, was - - -	3,916.75

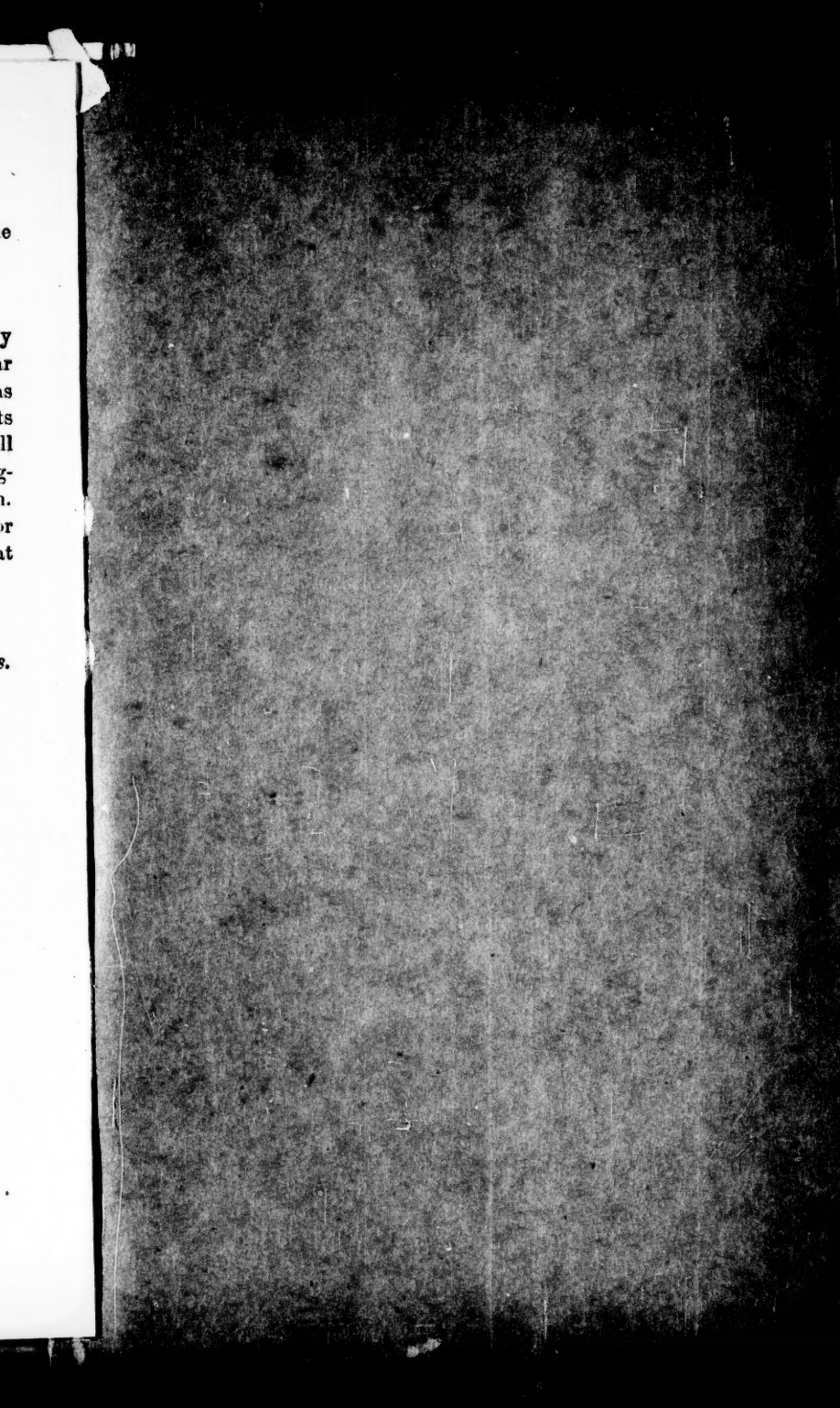
But, before they could ask for a decree for the payment of their judgments out of equitable assets, or obtain any relief whatever in the suit, it was necessary for them to prove that their judgments were recovered, and that executions were issued and returned, *nulla bona*, as stated in their petitions. These facts were not admitted in any of the answers filed in the case; nor was the petition taken as confessed—(if such a thing were possible); nor was any proof whatever, offered in behalf of those parties, either upon the subject of the recovery of the judgments or the issuing of the executions. Having failed to prove any of the facts stated in their petition, it is difficult to see how any of them became entitled to any relief in that suit. In respect to these appellants, even if they had been parties to it, the bill was properly dismissed.

4. The assignment to Robbins was made in December, 1857; and if void, for the reason that it was made to hinder, delay or defraud the creditors of Fenn, it was only void in

respect to those persons who were his creditors at the time the assignment was made.

Ward v. *Enders*, 29 Ills., 519.

These various judgments were not recovered until the July term, in 1858, of the Circuit Court; and it does not appear from the pleadings in the case, or from any proof that was made, that Fenn was indebted to any of these appellants when the assignment was made. It is not stated in the bill of complaint, or in the petition, when, if ever before the judgments were recovered, these parties became creditors of Fenn. Before they can question the assignment, it is necessary for them to aver and prove that they were creditors of Fenn at the time when the assignment was made.

JOHN VAN ARMAN,

Att'y for Appellees.